DISADVANTAGED BUSINESS SET-ASIDES IN TRANSPORTATION CONSTRUCTION PROJECTS

HEARING

BEFORE THE

SUBCOMMITTEE ON PROCUREMENT, INNOVATION, AND MINORITY ENTERPRISE DEVELOPMENT

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

WASHINGTON, DC, MAY 4, AND CHICAGO, IL, AUGUST 8, 1988

Printed for the use of the Committee on Small Business

Serial No. 100-65

U.S. GOVERNMENT PRINTING OFFICE
91-978 . WASHINGTON : 1989

H 721-24

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

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DISADVANTAGED BUSINESS SET-ASIDES IN TRANSPORTATION CONSTRUCTION PROJECTS

WEDNESDAY, MAY 4, 1988

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON PROCUREMENT, INNOVATION, AND
MINORITY ENTERPRISE DEVELOPMENT,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:30 a.m., in room 2359-A, Rayburn House Office Building, Hon. Ike Skelton (chairman of the subcommittee) presiding.

Present: Chairman Skelton; Representatives Savage, Hayes, Conyers, Flake, Lancaster, Conte, and Gallo.

Chairman SKELTON. This Subcommittee on Procurement, Innovation, and Minority Enterprise, will come to order.

Let me ask what witnesses are present. I will call them by name. Is Fred Jackson present?

Fred Jackson is not here.

Paul Guerrero? Deborah Wilder? Patricia Shea? Joann Payne?

All right. The first panel will consist of Deborah Wilder, Paul Guerrero, and Fred Jackson, and does anyone know Fred Jackson? If Mr. Jackson comes in, and he is identified, he is supposed to be with this first panel. That would help us tremendously.

Now I ask Deborah Wilder and Paul Guerrero to step forward.

I will ask a member of the staff to stand in the back. If Mr. Fred Jackson does come in, please escort him to the witness table.

Let me thank all of you for being with us today on such short notice. I want to thank my colleague, Esteban Torres, and the staff, for their assistance in making it possible to have testimony from representatives of businesses in California that wanted to be on the record.

We are here today to consider the amendment that was offered to H.R. 4174, the Small Business Reauthorization bill, which seeks to set percentage standards within the 10-percent set-aside which is required by law in federally funded highway construction projects. Specifically, the amendment would require that 65 percent of the set-aside go to minority businesses as defined in the Small Business Act.

That amendment failed in the committee, but only after a commitment was made to seek to resolve the issue before the Reauthorization bill got to the floor.

Let me point out that I do not believe that the exact percentages offered in the amendment as the point of this hearing. Rather, we are committed to working to find some common ground in which we can help to resolve this important dispute in a fair manner.

I have instructed the staff to keep other committees which have jurisdiction informed of our hearings and negotiations. I think I speak for all of our colleagues in expressing our desire to work on a solution all together.

Having said that, let me apologize in advance in the event I have to leave during portions of this hearing. As I explained during the previous hearing, I have been previously scheduled to testify on Education Appropriations bill later this morning, and second, concerning the Defense Authorization bill, I am to manage part of that on the floor.

So, with your indulgence, and when I turn into a pumpkin, I will ask the gentleman from Illinois, Mr. Hayes, to chair the hearing. I do thank you for your indulgence.

Mr. Conte, do you have an opening statement?

Mr. CONTE. Thank you, Mr. Chairman.

We are about to begin hearings on the impact of section 106C of the Surface Transportation Uniform Relocation Assistance Act of 1987. As you know, this became an issue for the Small Business Committee, when my dear friend, Mr. Conyers, offered an amendment on set-aside participation in the markup of H.R. 4174, the SBA Reauthorization Bill.

Section 106C does many things, such as setting a size limit on participants, but our main concern today is the provision that makes women presumptively disadvantaged individuals and abolishes separate goaling.

It is important to note that section 106C established the eligibility of women for the set-aside program and that 10-percent set-aside is a minimal requirement. It can be exceeded by the States.

I look forward to the testimony of our distinguished panelists here today, because I would like to know what the impact of section 106C has been in the industry, and if it has created any special problems for minority women.

I thank the Chair for his leadership and concern in following up so quickly on this important issue.

Chairman SKELTON. Thank you, Mr. Conte.

Does anyone else have an opening statement? Mr. Hayes.

Mr. HAYES. No opening statement.

Chairman SKELTON. Mr. Savage. Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

To my colleagues, I think this is an incredibly important hearing because now and as in the past, women and minorities have been powerful allies together, and it is my hope that this issue being honestly addressed and raised today will continue the coalition that we have formed across the years politically and legislatively. I have been a strong supporter of that coalition, and I hope that the coalition will continue.

It is very important that we do not turn our backs on each other at this juncture, but try to recognize the legitimate differences that exist, and see if we are skilled enough as legislators to craft a way to accommodate the needs of both of these very important groups.

It is with that spirit that I offered an amendment last week, and that I continue to be as deeply concerned about this issue as everyone on the panel, and I thank you for permitting these opening remarks.

Chairman SKELTON. Thank you, Mr. Conyers.

Mr. Flake.

Mr. FLAKE. No comment.

Chairman SKELTON. Mr. Lancaster.

Mr. LANCASTER. Mr. Chairman, I have no opening statement, but my good friend and colleague, Mr. Torres, has been detained. He does have an opening statement and asked that I ask for unanimous consent that it be submitted for the record at this point.

Chairman SKELTON. All right. Do you have it, or does counsel have it?

Mr. LANCASTER. The committee has it.

Chairman SKELTON. The committee has it. All right. Then without objection, Mr. Torres' opening statement will be put in the record.

[Mr. Torres' statement may be found in the appendix.]

Chairman SKELTON. Mr. Gallo, any opening statement?

Mr. GALLO. No; thank you.

Chairman SKELTON. Without further ado then, if there is no one else that has any opening comments, we will call on Deborah Wilder for her statement. Again, if Fred Jackson appears, he should be escorted to the witness table.

Deborah Wilder.

Mr. SAVAGE. Just for the record, you indicated that in your absence Mr. Hayes would take your Chair.

Chairman SKELTON. That is correct.

Mr. SAVAGE. I happen to be the senior Democratic member on this committee.

Mr. HAYES. May I just suggest that when you spoke to me this morning it was quite early. I have no objection of following the seniority rule even if it means going to the bathroom.

Chairman SKELTON. Thank you. My recollection in looking at the chart was that Mr. Hayes was next, and if there is no problem as to—if that is correct, when I turn into a pumpkin I will ask Mr. Savage to assume the Chair. Is that correct?

Thank you so much. Deborah Wilder at last.

TESTIMONY OF DEBORAH E.G. WILDER, EXECUTIVE DIRECTOR WOMEN CONSTRUCTION OWNERS & EXECUTIVES, USA

Ms. WILDER. Thank you, Mr. Chairman, and I would like to thank all of you for the opportunity to allow me to testify today.

I am the executive director of an association called Women Construction Owners and Executives. We are a national organization representing women owners, and what I call decisionmaking executives, in the construction industry.

I would like to briefly give you an overview of how the Surface Transportation Act has impacted women in our association, and I believe throughout the country.

Prior to the enactment of the Surface Transportation Act, the participation goals were legislated at 10 percent for minorities, yet women goals were only imposed administratively and, therefore, could be abolished at any time.

In recognizing the women as disadvantaged, this is the first time women have had the recognition legislatively, and that is an important factor, I believe, for this committee to consider.

Second, in recognizing women as disadvantaged, it has opened the door to women in the construction industry to be allowed access to various programs. It is my firm belief that women in the construction industry, as opposed to many other industries, continue to be systematically excluded because of the nature of the industry itself.

I can state as absolute truth that several major construction companies maintain two lists. If they are doing private work they work with the colleagues they have always worked with, and the only time that women or minorities are called is when they have Federal contracts and they are required to meet those goals.

Women construction owners seek to have women-owned businesses classified as presumptively disadvantaged in all agencies, not just with the Surface Transportation.

Finally, the Surface Transportation Act combined minorities and women under one goal. In some areas of the country this has meant that women have received the lion's share of the contracts, and I specifically refer to the Dan Ryan Freeway Project in Illinois.

In other parts of the country it has been the absolute reverse of that. In California women participation has dropped, in some areas, from 5 percent to less than 1 percent. It is a difficult problem for this committee to address because depending on the minority and women makeup of the country, it is going to be a difficult balancing act to decide how these goals are going to be split.

My position is that these goals should be split. We should not be fighting over 10 percent of the pie. Rather, we would like to see separate goals established over and above that 10 percent. I firmly believe that women should not be relegated to 2 or 3 percent, but that we should be entitled to an entire 5 percent of the market.

Now, I know that there are women throughout the country, like I said, who have been receiving the lion's share of that pie. Several of those members are members of Women Construction Owners and Executives, and I know for a fact two or three of those actually have contracts on the Dan Ryan Freeway in Chicago. I called those members on Friday before I came out there, and even though they have a larger percentage than they normally would, they recognize the importance of separate goals because at any moment that scenario can be reversed. At any moment the minorities can have everything and the women can have nothing, or the women can have everything and the minorities nothing.

If this committee and Congress is committed to the procurement program and to assimilating minorities and women in the construction industry, the only way to insure that is to insure separate goals.

What has happened in a lot of areas is that if you can find a woman contractor who can fulfill the 10 percent, that woman gets the contract, and there is absolutely no outreach to a minority firm at all, thereby, totally obliterating the intent of the procurement outreach program and vice versa.

With that, I strongly feel that the only way to resolve the problem is to impose separate goals, and the purpose of goals, if I could just state briefly, is to achieve greater participation. The combination of the Surface Transportation Act was actually a regression, in that the minorities previously had 10 percent, and the women 3. With the combined goals we are back to 10. The only way for us to progress is for us to set separate goals, and higher goals, and I would ask the committee to consider that.

I would be happy to answer any questions that anyone has.

[Ms. Wilder's statement may be found in the appendix.]

Chairman SKELTON. Surely. There will be some shortly.

Chairman SKELTON. Mr. Guerrero. Pronounce you name so I do not mispronounce it.

Mr. GUERRERO. I do not pronounce it properly either.

TESTIMONY OF PAUL GUERRERO, EXECUTIVE DIRECTOR, UNITED MINORITY BUSINESS ENTREPRENEURS

Mr. GUERRERO. My name is Paul Guerrero. I am a representative of the United Minority Business Entrepreneurs, and our position is identical with that of the CALTRANS Advisory Council, which is made up of minority contractors associations throughout the State, representing women, blacks, Hispanics, Indians, and so forth. I believe you have our position paper there.

Just some background on the effect this has had. It has not only had an effect on our highway construction, but has had effect in the cities themselves because we have programs in California where the cities follow the CALTRANS lead, but they also take and can set up their own goals, and many of them are following what the Federal Government has, and that is the 10-percent DBE.

Where that has a devastating impact is I am a minority contractor. I have a construction company, and in many cities when I bid I am counted toward the goal. So, if I bid as a general contractor, they count me as 100 percent. A minority contractor bidding with a 10-percent goal, he meets that full goal himself. He has to do no outreach.

Previously I had to do outreach to women contractors. I had to bring in a percentage of them. Now, I, and my fellow contractors, do not have to. It is the same if a woman contractor general bids as a prime. She has to do no outreach to the other minorities. That is wrong, and that should be changed.

That is one of the reasons we want separate goals. We want to go back to that.

The reason that the Advisory Council—their position is a little bit different. They want to at least be able to within the State of California set higher and separate goals within the State.

Previously CALTRANS on its highway projects had 13 and 3, and they were running at 18 percent participation. Now, we have just enacted within the State, and it will go into effect January 1, a new law that sets goals for all State projects, highways, buildings, anything within the State that has State funding in it at 15 and 5, which is a total of 20 percent.

When we bid to a freeway project, that 15 and 5 is melted into one goal. Again, one person can meet it. The effect this had in a State like California, in areas that have a very high Hispanic population, is we meet that goal with Hispanics, and my organization does represent women contractors, and we would like to go back to the separate goal and involve the women contractors.

Thank you.

Chairman SKELTON. Thank you. I would like for Deborah Wilder's prepared remarks to be made part of the record without objection, and also the position paper of Mr. Guerrero.

Mr. GUERRERO. That is the Advisory Council's position paper.

Chairman SKELTON. Release the position paper that was just handed out to be made part of the record without objection.

[The Advisory Council's position paper may be found in the appendix.]

Mr. Conte.

Mr. CONTE. I am a little bit confused about the Dan Ryan Expressway project. If the Hammerschmidt amendment was never adopted, they would not have any problem with the Dan Ryan Expressway, would they?

Ms. WILDER. As I understand, the State of Illinois has separate goals of approximately 5 percent for women, and 10 or 15 percent for minorities. I would assume that there would be—there is also a required outreach under the Department of Transportation Administrative Regulations, so that there would be women participation on it.

I view the problem with the Dan Ryan Freeway Project not as a goals problem, but as a certification problem. There has been allegations that a husband comes in, transfers 51 percent of the business to his wife, bids a project, gets the lion's share of the project. To me that is a front. OK? Under no circumstances do we support fronts. We support the legitimate women-owned business.

That is a certification problem. It is a problem that the certification process is not strong enough to weed out, or is not tight enough to prevent that type of sham from passing through, and that is a certification problem, and I would be happy at any time to talk to anyone on this committee about establishing a unified certification problem for the entire country with some very, very tight requirement, so that type of problem does not occur. I consider that a certification problem, and not a goals problem.

Mr. CONTE. The thing that troubles me about the Dan Ryan thing would be that if you did not have any law at all, including women for set-aside, that women then go in there and compete, or whatever they want, in that contract. Now, the way that law is written it would seem to me that they are very limited. They only can get a certain percentage of the action set aside. Am I right?

Ms. WILDER. No; we always have the opportunity. I can go in and bid for 100 percent of the project.

Mr. CONTE. You can?

Ms. WILDER. I can.

Mr. CONTE. Even with this new law?

Ms. WILDER. Even with the combination of goals. That only requires that at least 10 percent of that project go to women or minorities. There is no restriction. I always have the opportunity to bid for 100 percent of that project.

Mr. CONTE. I see.

It was the intent of Congress to make distribution of contracts under the 10-percent set-aside equitable. How can that intent be enforced in a competitive program where the lowest responsible bid is the sole determinant?

Ms. WILDER. I am sorry. With the lowest responsible bid as the determination?

Mr. CONTE. Yes; sole determination.

Ms. WILDER. I do not think it should be the sole determination. It should be the lowest responsible bidder, and there should also be a requirement for participation. You can have general contractors undercutting bids just to force out women and minorities in the market. So, I think that it has to be the lowest responsible bid, and those are two different criteria.

Mr. CONTE. Prior to the STURRA, did all States meet the statutory 10-percent MBE, and the 3-percent administrative WBE requirement? And if not, why not?

Ms. WILDER. I do not have the actual statistics, but I did talk with the Department of Transportation yesterday. I was informed that not all States were able to meet the 10-percent minority requirement, particularly in what I would call the Farm Belt States, and in a couple of isolated New England States. I believe Vermont was one of them.

However, the Department of Transportation has the authority to grant exemptions in meeting those goals if the populations in those States do not supply enough of a pool, and so long as the contractor has used a good faith effort. These are not quotas. These are goals to seek after.

Mr. CONTE. What is your opinion of the STURRA regulation that lowers size standards from $17 million to $14 million for MBE and WBE participation in the 10-percent set-aside?

Ms. WILDER. I think the size standards, the reduction has seriously hurt the smaller businesses, and women and minorities, because as soon as you get to the point where you are large enough so you can bid these projects, and secure the bonding that is necessary—because you have to have a certain amount of credibility before you can get the bonding—as soon as you get into that program you are then thrown out of it. I strongly feel that the reduction in size standards for construction has seriously hurt both the women and minority community.

Mr. CONTE. You believe that the previous two goal system, the 10 percent for MBE's, and 3-percent WBE's, was fair to women?

Ms. WILDER. No; I would like to see the goals for women raised.

Mr. CONTE. Regulations promulgated pursuant to section 106 also contain other provisions addressing minimum uniform certification standards, and permitting 60 percent of the value of goods purchased from MBE, DBE, or WBE, regular dealers to be counted toward the contractors, or recipient's goal. Do you have any opinion on that?

Ms. WILDER. I feel the 60-percent increase is fair to suppliers. My only concern is that if there is some way through the certification process, we can regulate legitimate suppliers versus what I consider the broker front who only has a desk and a telephone and things are being run through. Again, that is a certification problem. But I feel 60 percent is a fair percentage.

Mr. CONTE. I have a lot of other questions. I will submit them for the record. I just want to compliment you for your testimony, and it appears that you know what you are talking about.

Thank you, Mr. Chairman.

Ms. WILDER. Thank you.

Chairman SKELTON. Let me ask a couple of questions at this time, because I do have to leave. Mr. Guerrero, I will ask you to respond to this as well as Ms. Wilder.

First, for the record, both of you, explain what you mean when you say separate goals. Mr. Guerrero.

Mr. GUERRERO. In the California contingent what we would like to see is the ability to follow our goals within the State, which are 15 and 5 right now.

Chairman SKELTON. You are speaking of California.

Mr. GUERRERO. I am speaking of California. Or if we choose to raise them to 20 and 10, or whatever, to be able to set a higher and a separate goal so that a contractor has to do outreach to both communities, and secure bids from both communities.

Now, just to touch on that too, we do not see goals as something that you have to achieve. What we want is the ability to bid. We want the doors open just so that we can submit a bid, and we think that the lowest bidder should get the job, not the second lowest bidder because he happens to be minority. We believe the lowest bidder should get the job.

But we believe that if we are allowed to bid, you will find that minorities are many times the low bidder. That is what we are asking for.

Chairman SKELTON. Ms. Wilder.

Ms. WILDER. When I say separate goals, I mean a 10-percent goal for minorities, or whatever, and a 5-percent goal is what I would like to see for women, and have separate outreach to those communities.

However, I would like to continue to have women classified in the construction industry as disadvantaged because that allows opportunities for special loan programs, special assistance programs to help women become assimilated in that industry. So, I would like to keep the classification, but within that classification, require separate outreach, separate goals, and outreach.

Chairman SKELTON. Does this give you two bites of the apple, to be listed as disadvantaged on the one hand; on the other hand to have your own separate goals?

Ms. WILDER. I do not believe so, and the reason is if you accept the premise that women in construction industry have not been given the opportunities that even the minorities have been given up to this point, then we are, in fact, disadvantaged, and I am not trying to take part of the disadvantaged program, and plus the women. But, what has happened is a lot of agencies, Department of Defense, and other agencies, look at the SBA's definition of what disadvantaged is, and women are not given access to assistance programs to help bid contracts, or not given access to special loan programs. The minorities are getting it. The women are being shut out from them.

So, in making us disadvantaged you would assist us in all the other agencies in giving us those type of—what I just call basic paperwork assistance, and loan assistance. But I do not think you are going to give us two bites of the apple by giving us separate goals.

I want to say that it is my belief that a male contractor would just as soon give that contract to a male minority before he would give it to a woman, be she Caucasian, or a minority woman.

Chairman SKELTON. Let me ask now, I am from a small town, rural America, and we know that throughout different parts of the country there are people in various businesses, such as the contracting business. They are not spread evenly like you can spread butter on a sandwich. For instance, in my part of the country, rural Missouri, you will not find businesses regardless of their minority, women owned, or otherwise, that meet any goals, and this is a serious problem.

What do you do about those areas that are not urban where you do not have a pretty good mix of the population involved with contracting? What do you do about those areas where there is not enough businesses to meet these specific goals to which we are referring today, whether they be minority, whether they be women, et cetera?

Ms. WILDER. The goals only require what is called a good faith effort, and I know there are many areas of the country that cannot meet these goals. All that is required is the contractor do a good faith effort in outreach, and if the community cannot support that, then the DOT has allowed an exemption.

In fact, when the OFCCP, the Office of Federal Contract Compliance, comes in to audit Federal contractors, many times, depending on the industry and the location, the contractors cannot meet Federal goals. But what the OFCCP looks for is the good faith effort of that contractor to outreach to the communities, and if that outreach is there, even though the goals are not met, there is no violation.

Chairman SKELTON. Mr. Guerrero, do you have any thoughts on that?

Mr. GUERRERO. No; I agree with what she says. The premise is to have the general contractor, and I am a general contractor, solicit bids, and believe me, if I have a low bid come in at 15 minutes to 2 just before the bid opening, I do not care what race, what color, what sex that bid is. If that is the low bid, I better use it because I am not going to get the job if somebody else is going to use it.

So, the purpose of the program is to open the door to get that low bid in, make a good faith effort, make an outreach into the minority and women business community. Once you have done that, the showing of a good faith effort is sufficient in communities like yours.

Chairman SKELTON. Mr. Gallo.

Mr. GALLO. As a member of the Public Works and Transportation Committee, I recall some of the statements that were made by Congressman Hammerschmidt in dealing with the set-aside, which was at 10 percent, and I believe at that stage there was a concern raised by your organization, or independent contracting women, that they were being shut out of the marketplace. This just did not come out of the blue. It was lobbied very heavily for some way of breaking into the system, and in the true sense, when you say minority women, you have not classified white as being in the minority in the same sense that you deal with set-asides. But in this particular discussion that took place it was felt that there was a minority status applied to it because women were not getting into the marketplace at all. The question was raised, or you put in your initial statement, that you do not object to the set-aside, but we need brackets of 5 percent—I guess it was 5 and 3. What was the figure you used?

Ms. WILDER. Prior to this there was a 3-percent administrative goal. I would like to see it legislated at 5 percent.

Mr. GALLO. So that would be 5 and 5? Is that what you are referring?

Ms. WILDER. No; I would like to see the overall goal raised.

Mr. GALLO. To 5 and 10?

Ms. WILDER. I think that is a fair reflection of the market. I mean, I would love to have 20 percent. But I just think that 5 percent is a fair reflection of the market. Unfortunately, we did not, in fact, testify at those hearings.

Mr. GALLO. The thing that disturbs me at this juncture is that there have been some successes, obviously, in the Chicago contracts, but I feel very uncomfortable with the pitting of women against women in a field that is difficult enough. I think that if we are going to come up with some solution to this, we have to take into consideration the needs of both minority women, and women in general, and I am not sure that this is the way it is addressed. Maybe we should be looking at what you are referring to as a higher percentage, and then a breakout, so it is clear and concise, and that no one is jeopardized.

Ms. WILDER. Unfortunately, the combination of goals not only—you have had a lot of infighting between the women and minorities, and I think that has been self-defeating.

Mr. GALLO. I would agree.

Thank you, Mr. Chairman.

Mr. HAYES [presiding]. I want to compliment both of the witnesses for their testimony, and particularly yours, Ms. Wilder. You have underscored some of the points that some of us have been making.

The Dan Ryan Project, which is gaining national attention, part of it is in my district in Chicago. For your information, we have asked the inspector general to investigate in these situations, specifically the issue as to whether or not the 10-percent set-aside requirement is being complied with.

There are some of us who are interested who cannot seem to get information as to what the percentages are of contracts that are let. We would like some information as to the dollar amounts, and who has what. We have some feeling that the Illinois Department of Transportation which has a responsibility for the letting of the contracts, has created some of the problems that we have.

But I share your opinion when you say I have no problem with the 10 percent setting alone, and 5 percent being designated for women. Just to cite a little bit of history, as I am sure both of you know, there was a time until the former chairman of this committee, Parren Mitchell, came up with the idea of the 10-percent set-aside, that minorities got very little of anything when it came to highway construction. They were used primarily as fronts, if they were lucky.

So, this was part of the main purpose of trying to at least begin to give all those who could comply a chance.

Now, you mentioned specifically that the goals are not the problem, I think you said, but certification is. Is that what you said?

Ms. WILDER. Goals are one problem, is what I am saying, and I would like to see those separated and raised. But another problem is the certification process. Only through tight certification requirements are you going to prevent both the minority and the women fronts from taking over those procurements goals that this committee and Congress has set. I feel very strongly that maybe some type of national, if you will, certification process that you be certified one time, and one time only, and all other agencies recognize that.

Currently if you do a project with UMTA, the Urban Mass Transit Authority, you have to be certified in one geographic area in a State. If you have another project in another part of the State you have to be certified all over again. If you have ever looked at the certification applications, I can tell you they are literally an inch thick. Each time you are certified they ask the same information, but they ask it in different form. You have to resubmit this form and update it on a yearly basis. For a contractor who is trying to go out and bid work, it is self-defeating to have to recertify every time you want to move 20 miles, or 50 miles, or 100 miles, to do another project.

I consider that a separate question, but one just as serious as the goals.

Mr. HAYES. Yes; do you have a response?

Mr. GUERRERO. I agree with her. I think that uniform centralized certification would be a good idea, but I would not want to see it a certification so restrictive that it started excluding people either. It would have to be a reasonable certification. There are certifications out there that are so restrictive that halfway through, contractors throw the stuff in the garbage can and say "it is not worth the effort." So, it would have to be reasonable.

Mr. HAYES. Congressman Savage. We are going to have to break after Congressman Savage to go vote. You can understand that. We will break for about 10 minutes. Go ahead.

Mr. SAVAGE. Mr. Chairman, I wonder if we have time. I have quite a few questions. How much time do we have?

Mr. HAYES. Well, why don't we go vote now, and then if the witnesses will indulge us to run, we will be back in 10 minutes?

Ms. WILDER. Thank you.

[Recess.]

Mr. HAYES. Will the hearing come to order.

When we broke to vote, our colleague from Illinois was about to submit his questions of the panels, and I understand that my colleague from Michigan has another. Is it all right to go ahead? All right. You go ahead then, Congressman Savage.

Mr. SAVAGE. Let me kind of refresh my memory now on your testimony.

Ms. Wilder, you know we are considering an amendment also in full committee regarding this matter. Are you familiar with the proposed amendment?

Ms. Wilder. The splitting the 10 percent into——

Mr. Savage. Yes; do I understand from your testimony you oppose that?

Ms. Wilder. If I had a choice I would rather have it split and raised. I think what you are going to have—if you are splitting the 10 percent—you are going to have both the minorities in here, and the women in here, arguing between themselves, and I do not think that is a viable solution to the problem.

Mr. Savage. Again, does that mean you oppose the amendment?

Ms. Wilder. Overall, no; I am not opposed to separating the goals. I do not think that it is the solution, but I would support the amendment if I had no other choice.

Mr. Savage. Now, you say that you should have a two-goal system, is that correct?

Ms. Wilder. Yes, sir.

Mr. Savage. You refer to the one goal as being one goal for minorities and the other for women. Well, now, minority women are included in the minority goal, so are you saying a second goal for white women, or are you saying a second goal for women in addition to the minority women's participation in the minority set-aside?

Ms. Wilder. I see as one goal for minority, if you will, minorities, and another goal for women that would include white women, as well as minority women. Under the current certification process a woman minority contractor can be certified under either, and can satisfy goals under either. That is the current status, and I would not necessarily change that.

Mr. Savage. Let me finish that for you. At present you would have a 10-percent minority set-aside. That would include minority women, right?

Ms. Wilder. That is correct.

Mr. Savage. Now, you propose a two goal system where in addition to that 10-percent set-aside, which includes minority women, an additional goal, I think use the figure 5—did somebody up here use that figure? Well, let us use the figure that—well, previously, as you know, in the Highway bill it was 3.2. I think it was 3.2, was it?

Ms. Wilder. It was around 3 percent.

Mr. Savage. Are you proposing then that minority women remain as participants in the minority set-aside, right?

Ms. Wilder. Yes.

Mr. Savage. And also participants in the 3.2?

Ms. Wilder. Yes.

Mr. Savage. Is that right?

Ms. Wilder. Yes.

Mr. Savage. So then, that a minority woman business owner could account toward the fulfillment of both goals.

Ms. Wilder. Theoretically; yes.

Mr. Savage. Then theoretically what you are suggesting, I gather, is that if you gave 3.2 percent of your contracts to businesses owned by minority women, then there would be no need to give contracts to nonminority women at all, and yet you would be in compliance with the two goals.

Ms. Wilder. That is true.

Mr. SAVAGE. And you are comfortable with that?

Ms. WILDER. Yes, sir. My association represents not just white women, they represent Hispanic women, and black women, and American Indian women as well.

I am comfortable with that position. In the reality of it, what usually happens is the minority goal goes to a minority male.

Mr. SAVAGE. There are a lot of forces, large contractors in this country, who are opposed to set-asides period.

Ms. WILDER. Yes.

Mr. SAVAGE. Because they feel that comes out of the general pot, right?

Now, let me ask Mr. Guerrero. I am not sure if you are in sync. I am not sure if this is the way you are going, or if you are going at the same time up or down.

Now, let me pose a similar question to you, Mr. Guerrero. Since there are those who are opposed to set-asides, often people who are in decisionmaking positions with regard to the awarding of the contracts, do you think that the two goal system would promote and encourage them to find ways to promote women-owned businesses so that rather than having a two-goal system in effect, you would end up with 10 percent owning. Do you see what I mean?

For instance, as the Highway bill was constructed before, you had 10-percent minorities, and I think it was 3.2 for women administratively.

Mr. GUERRERO. Right.

Mr. SAVAGE. If you gave 3.2 percent to minority women, then you would only be required to give 6.8 percent more to minorities to fulfill the 10-percent requirement. Do you follow me? The 3.2 that you had given to minority women would meet the women requirement. So, effectively, you would have reduced a 13.2 combined goal to 10 percent. Do you follow me?

Mr. GUERRERO. I follow what you are saying.

Mr. SAVAGE. What is your reaction to that?

Mr. GUERRERO. What you are really talking about, as I understood, was two classifications for women, women and minority women.

Mr. SAVAGE. That is what I was asking her, but Ms. Wilder says no; she means one classification. Is that right?

Mr. GUERRERO. You were talking about two.

Mr. SAVAGE. No; I asked her about that. I am not suggesting it.

Mr. GUERRERO. If we were to look at those two classifications, and there was one that is really getting to the bottom of the barrel, that is minority women, because if you think a minority has a hard time getting through the door, and a woman has a hard time getting through the door, a minority woman—they do not even let her touch the door knob because she is just really at the bottom of the barrel.

So, if you had a separate goal for minorities, 10 percent, and you had a separate goal for women, 5 percent, and I am not talking about minority women, I am just talking about women, and a minority woman could meet either goal, I think that would be great because that would let her in the door too, and she has never even been able to touch the door knob before. That is just my opinion.

Mr. SAVAGE. Very good. Thank you, Mr. Chairman.

Mr. **Hayes**. Mr. Conyers.

Mr. **Conyers**. Thank you very much, Mr. Chairman.

First of all, I want to commend the witnesses. We are at the point of beginning to delineate and understand the problems of these two great groups, and we are trying to separate them out. So, I want to begin by telling you that my amendment, which went inside the 10-percent set-aside, is probably going to be recrafted to meet the suggestions of yourselves and your testimony today, and the gentleman from Illinois, Mr. Savage, who sits also on the Public Works Committee. Instead of going inside the 10-percent set-aside, we try to create an additional set-aside for women, and I think that would be the thrust of both of your testimonies this morning, and I think it is very, very important.

The second part of your testimony, Ms. Wilder, was about the problem with fronts, and although that is not the focus of our hearing, it is one that has a lot of people in very deep concern, and I think that the husband/wife possibility for achieving certification is a very important one, and I am particularly glad that you raise that.

Finally, it is my impression that the Hammerschmidt amendment, and the other amendment, I think it was Senator Simms in the Senate, all of those were amendments that came off the floor, and did not enjoy the benefit of a considered discussion. I think that is what we are doing now. We are beginning to learn about the differences in the nature and type of the discrimination between blacks as a minority, and women from a point of view of gender. We think that the record should be amply illustrative of the problems that create the legislation that we bring forward.

So, to that extent, the hearings that have been held by the chairman of the full committee last week, and other hearings, are going to be important. I think we are probably going to have to hold additional hearings on the circumstances of women in business, and what we see is a record developing that dictates how we approach it.

Now, the question that remains then for us to examine is this—the number of minorities, and the number of women, that exist in the business community. I have a rough statistic that suggests that there are approximately 800,000 minority-owned businesses, and I take minority in this case to be black owned, and that there are roughly about 3 million women's businesses of a sole proprietorship that would meet a general small business definition.

This, of course, creates a great imbalance, and might account for the Dan Ryan incident, and could set a reaction that could occur anywhere. The problem being, of course, is that we are not trying to create set-asides, or goals, to have two important groups competing within a set-aside to get it. We are trying to provide a reasonable possibility for both of them to grow and mature.

So, it seems to me that your testimony has tracked the statements that I made in an my opening statement and the opening statement of our colleague from California, Esteban Torres, and it tracks a general sentiment that in very informal conversations I have had with a number of the members of the Congressional Black Caucus who participate in these matters.

Could I invite both of you to comment on this general strategy that appears to be emerging?

Ms. WILDER. I think it is wonderful, and I appreciate the perception and foresight of this committee in identifying the problem so quickly. When the Surface Transportation Act was originally passed my association was very concerned, and we said, well, let it ride. It has been about a year, and I think this committee has identified the problems correctly, and we would support your position.

Mr. GUERRERO. Yes: we applaud your position, and if we could be of any assistance at all, let us know. We would be glad to come back and testify before this committee again, if it is needed.

Mr. CONYERS. Well, I think your help, and many other organizations' help, is going to be required for this reason. There may be some in the legislature here who may be reluctant to add on yet another set-aside, and for that we will need them to be able to be informed not only in our hearings, but also in terms of their constituency contacts, that it is made clear to them that if we do not make this separation, we will be mixing apples and oranges in such a way that it will result in a divisiveness that was absolutely unintended by those who have created the whole concept of set-asides.

So, it is out of this very narrow journey that we are trying to move forward, and I want to commend the new subcommittee chairman for quickly holding these hearings, and allowing us to begin to get in discussion with those of you who are out there on the front lines and are representing women and black business people who are trying to create a little bit larger window to involve themselves in what has been referred to as a capitalist economic system.

This system cannot claim any modicum of fairness if, in fact, it is closed at the opening points of access. In other words, if only those in business, and who are reasonably sized are able to participate in contracting even with our own Government, then that begs of correction. It is in that spirit that I think your testimony is exceedingly helpful in helping us move out of this problem that has presently arisen.

I thank you, and I yield back the balance of my time, Mr. Chairman.

Mr. HAYES. Mr. Torres.

Mr. TORRES. Thank you, Mr. Chairman.

If I may echo the comments of my colleague, I want to thank Chairman Skelton for agreeing to hold this important hearing on such short notice. I know he cleared it with my colleague, Congressman Hayes, of Chicago, because initially Chairman Skelton had agreed to hold such hearings in Chicago. However, I felt it was important for Chairman Skelton to hold these hearings today because some of our witnesses were already scheduled to be in Washington. I think it has been a good opportunity for the committee, and for myself, to be able to take advantage of their presence here today.

You have done a really good job in answering the questions, and clearly laying before us an issue that has caused a great deal of confusion and misunderstanding. You represent an important group in California, the Advisory Council to the Department of Transportation, Office of Civil Rights. I know that you are speaking for many groups from California, the State I represent. You came in with Mr. Pla, and others, and I want to thank you again for the excellent testimony that you have given us this morning.

I would also like to thank my colleague, Martin Lancaster, who is no longer here, for introducing my opening statement. Mr. Chairman, I would request that it appear in the record as such. I have no questions of the witnesses. I think they have done a superb job this morning.

Thank you.

Mr. HAYES. Without objection, your request will appear in the record.

Congressman Savage.

Mr. SAVAGE. For the record, and also to elicit any response that the witnesses may wish to make, first, I am a member of Public Works and Transportation Committee. The amendment that included nonminority women in the 10-percent set-aside in the Highway bill, and Surface Transportation bill, never passed in committee, was never considered in committee. It was a floor amendment.

Out of the committee came a simple 10-percent minority set-aside that existed in the prior legislation. The 3.2 percent regarding women in the prior legislation, as you have indicated, was administratively worked out by the Secretary of Transportation, not in the law, in the regulations instead.

I have an amendment pending in that committee presently to return to where the law was prior to the amendment which was presented on the floor by the ranking Republican of that committee, John Hammerschmidt. My amendment would go back to a two-goal system, 10 percent for minorities, and 3.2 percent for women. The difference between that and the previous bill is only that we would put the 3.2 in law, whereas previously it was only done administratively.

Now, the point of trying to attach that to the technical assistance amendment that is pending with reference to the Highway bill, or is the next train out of the station, and the train that is sure to move quickly.

Now, I gathered from your testimony that you would be supportive of that, is that right?

Ms. WILDER. Yes, sir; I would be supportive of it. However, I do feel the 3 percent is inadequate. There are far too many contractors out there who say "2 percent, 3 percent, I do not need to worry about it," and women are still being shut out.

Mr. SAVAGE. Again, I said two things.

Ms. WILDER. Right.

Mr. SAVAGE. Do you prefer that to collapsing the 3.5 into the 10 percent?

Ms. WILDER. Yes; I prefer your amendment giving the additional 3 percent.

Mr. SAVAGE. All right. Now, let me go a step further. It is 3.2.

Ms. WILDER. Right, 3.2.

Mr. SAVAGE. Now, let me go further. While it says 3.2, it effectively does more than that because you see minority women, that is the question I raised with you earlier, also are eligible to participate in the 10.

Now, some of my colleagues had suggested that the 3.2 be designated for nonminority women in order that you do not have the double count, and the reason they suggested it—that is not what my amendment does. My amendment does not make that distinction. The reason they say that they have suggested it is because if you restricted the 3.2, then you would more likely get more than the 3.2 because of the participation of minority women in the 10. Do you follow me?

Ms. WILDER. Yes.

Mr. SAVAGE. That is not what my amendment does, but that is what I wanted to raise with you, because that question has been raised, and I have found in discussions I have held with my colleagues on the committee in preparation for the markup on this amendment.

Ms. WILDER. I believe you would do a disservice to the minority woman community to exclude them from the women's goal. Currently, when they bid contracts you must make the option either you are a minority or you are a woman. A minority woman does not get counted toward both. There has to be an option made at that time, and I feel that you would be doing a disservice to the female minority community to lump them in with male minorities.

Mr. SAVAGE. Well, let me suggest since you asked what you could do to help, this should be moving fairly rapidly. The chairman of my committee, Congressman Glen Anderson, the ranking Republican is Congressman John Hammerschmidt, and your views, I am sure, would be appreciated, particularly if you indicate clearly where you stand, but that is that you favor the amendment, and that you would oppose designating the second goal as between minority and nonminority women. It would be very helpful.

Now, the other point I wanted to make is that there are two other instances where you have the same problem in law. Are you aware of these? You have it with regard to the set-aside with the Agency for International Development, where the result has been similar as in the case of the Dan Ryan Project. You have it in the Airport Safety Act, FAA.

Ms. WILDER. Yes.

Mr. SAVAGE. There are two possible ways of coursing it that are not contradictory; in fact, may be supplemental. One is as I am doing, which is to propose the change in the committee of jurisdiction, and try to roll them back in the instances of each of the agencies involved, the departments. and/or to develop a set-aside in the Small Business Act for WBE's.

Ms. WILDER. I would be very much in support of that. It is very difficult to battle agency by agency for goals for women contractors, and I would support an overall WBE goal through the Small Business Administration.

Mr. GUERRERO. One thing, we would support the proposed amendment, but one thing I did not hear in there, and I would hope that you would take care of that within small business, would be to keep these business development centers open to the women contractors because when you go back to the old language, and that would close those doors to them again.

Mr. SAVAGE. How is that. Explain that to me.

Mr. GUERRERO. OK. Deborah, do you want to handle that?

Ms. **Wilder**. Well, currently right now, for example, the minority business development out of the Department of Commerce, if I have a white woman contractor go to them and say "Hi, I need some assistance," they say, "sorry, you are not a minority. We cannot help you." So, not only are we excluded from the white male community, we are now being excluded from the minority assistance as well.

So, if you would classify women as presumptively disadvantaged, particularly in the construction industry, because I believe that industry more than any other still excludes women over and above even minorities, and allow these women access to the programs that are now available to the minorities, I think you would do them a great service.

Right now if Caucasian women go to the MBDA and say, "Hey, I need a little bit of assistance," they say, "I am sorry. You have to go handle this on your own." It is creating a real hardship for white women who already have battles to fight in getting their contracts.

Mr. **Savage**. There are no programs then that would serve you other than the program for the set-up of minorities unless additional programs are developed, is that right?

Ms. **Wilder**. Yes; currently, my understanding is the only thing is there is the Women's Bureau with the Department of Labor that basically deals with training and opportunities for the labor force, which does not really apply, and then we have the women ownership section with the Small Business Administration, but again, those services are not there the way they are for the minority community.

Mr. **Guerrero**. Actually, when you have these BDO's out there in the field, and they are well set up, they are well organized, they are well staffed, and doing a good job, and it would not take as much——

Mr. **Savage**. The BD what? Pardon me.

Mr. **Guerrero**. They are called Business Development Organizations, business development centers, and they are funded by various agencies within the Federal Government. They have various sources of funding. But most of them follow the small business regulations, and it would not take much additional cost, if any, to allow them to service the women contractors, as well as the minority contractors. They are all out there working on the same freeway. They all have the same problems getting paid, getting access to plans, and so forth, and to just open those doors to the women contractor.

Mr. **Savage**. It would not cost any more, you would mean that you are not suggesting increasing the services—you are suggesting keeping the services at the present level, but increasing the applicants?

Mr. **Guerrero**. Yes; because——

Mr. **Savage**. Would that not dilute the services?

Mr. **Guerrero**. I do not know if it would or not. They maintain plans, and so forth. They would open the doors. They could come in and look at the plans.

On many of them the applicants pay a small fee. I suppose that there would be some increase in cost, but there are not that many women contractors out there anyway in proportion to the minority contractors, so it would be a small increase in cost.

Mr. SAVAGE. Is that what you are suggesting also, Ms. Wilder, that you receive access to the business development centers, but you are not suggesting increasing the service capacity?

Ms. WILDER. Well, I think you are going to have to increase service capacity to a certain extent, but certainly not to the extent if you went and set up a separate agency, or a separate department. I think in that instance you would incur significant increase, whereas, if you would just allow us access and opportunity to deal with the business development agencies, I think you would get more, if you will, more bang for your buck doing it that way.

Mr. SAVAGE. Well, if you would increase—what, in effect, would amount to—say, like in my amendment—you are suggesting what percentage if we were doing it through SBA for women?

Ms. WILDER. If I did just women in construction, I would——

Mr. SAVAGE. No, no, no; if we did it to an amendment to the Small Business Act where you would set up a WBE category.

Ms. WILDER. I would be hard pressed to give you a figure off the top of my head.

Mr. SAVAGE. Let us take the one that I am using in my amendment, the one that had been used in the previous Highway bill, 3.2. You would not propose a push that the Department of Commerce increase its business development centers' capacity, meaning in terms of personnel and so forth, by proportionately, for instance, you would be talking about increasing the set-aside for almost one third. But you are not suggesting that they increase their capacity of personnel and what have you?

Ms. WILDER. No; you are going to have to increase personnel, and——

Mr. SAVAGE. That is what I thought.

Ms. WILDER [continuing]. Funding. I am just saying that, I believe, is a better avenue than setting up a totally separate agency. It is a better fiscal solution, if you will, to just open the doors and provide that extra step instead of setting up a separate department.

Mr. GUERRERO. I do not know if it would increase the staff by one third. I do not think it would increase the staff proportionally because much of that staff is supervisory, and I know in my office if I hire two more employees I do not increase. I just supervise them.

Mr. SAVAGE. Thank you, Mr. Chairman.

Mr. HAYES. Mr. Lancaster.

Mr. LANCASTER. No questions.

Mr. HAYES. Before dismissing the panelists, since we have no minority representative here now, staffer Bill Angelo for the minority has a couple of questions he would like to ask of you before you leave.

Mr. ANGELO. Thank you, Mr. Chairman.

Just two quick questions. Besides what is under consideration today, do you know of any State or Federal regulations that are designed to give large firms an unfair competitive advantage, or prevent full and open competition? For example, in Illinois there was a requirement that was only recently repealed that for any job with over 50 percent asphalt or concrete paving work, only companies that own or lease an asphalt plant were allowed to bid on the project. Frankly, I find it incredible that such a rule was even considered, let alone promulgated.

But do you know of any rules such as that, or common practices, that effectively act as barriers?

Mr. GUERRERO. Well, I would say if you want to look at an asphalt plant, a large paving contractor that has his own asphalt plant, he has an edge to start with because he is not paying a markup on the asphalt. I mean, he can go out there and cut that markup if he wants the job bad enough because he is producing his own product. Whereas, his competitor, if I was competing against him, I might have to buy product from him, and so that would give him a competitive advantage. But that is what happens in business, so I do not know if that answers your question or not.

Mr. ANGELO. Well, should there be uniform pricing on a particular project if this guy is going to bid on it?

Mr. GUERRERO. Well, in our particular State there is uniform pricing with regard to labor on a particular project, and I do not know how you—if you had a uniform pricing per product I think the difference in the pricing on a product, and sometimes our company goes to the higher price, is the service. I mean, if we are buying concrete, I want a concrete company that can deliver me concrete at 8 in the morning, not at 8:30 if I call for it at 8, because I may have five men I am paying standing there for that half hour.

So, the thing that some of these suppliers are selling, the hot mix, the asphalt plants, the truckers, and so forth, they are selling a service, and they are selling their ability to perform, and you cannot put a price on that.

Ms. WILDER. I just cannot recall any specific laws similar to that one. I am sure there may be some out there.

Mr. ANGELO. Just one more quick question, please, on the issue of certification, which your organization addresses.

The certification issue is a vexing issue, and sometimes States, indeed agencies, use the process as a barrier to participation.

In his original 8(a) reform bill, H.R. 2269, Mr. Conte offered a provision that provided for a preemptive certification. Basically, what it said was that all Federal agencies shall accept a certification issued pursuant to a definition in section 8(a) of the Small Business Act, as conclusive as to the eligibility of such concern as a socially and economically disadvantaged business concern.

In the case of award of contracts by any State, for goods, or services which involve the use of Federal funds, the State also shall, for determining the eligibility of businesses for State contracts awarded to socially or economically disadvantaged businesses, accept such certification as conclusive. How do you feel about that?

Ms. WILDER. First off, that excludes white women. The presumptive categories——

Mr. ANGELO. Well, this was addressed to the 8(a), but what I am saying is to broaden that category.

Ms. WILDER. That would be helpful. The current situation now is that—I mean, you must be certified again, and again, and again, and again, and the certification process is very cumbersome, and in many States you can request certification, it will be months and even years before you are certified. If you would broaden that to expand it, to include Caucasian women as well, I think that would go a long way.

Mr. ANGELO. Right. That would be the intent of this, just basically as a preemptive certification for all agencies or States, whatever, dealing with Federal contract dollars. Once certified by the SBA, or whatever, the certification stands, and you need only recertify through some quick and easy process.

Ms. WILDER. Yes; but most of our members feel that, even though the certification process is fairly cumbersome, that they are willing to go through a detailed certification process if they only have to go through it once.

Mr. SAVAGE. Mr. Chairman, may I ask of the counsel for clarity. In Congressman Conte's proposal, once you have been certified, that certification would continue to apply even after you have been pushed out of the 8(a) program?

Mr. ANGELO. No; it would not.

Mr. SAVAGE. That is a problem I want to bring to attention. The 8(a) program has some limits when they push out a business, and right now has passed the House, and now pending in the Senate, is a reform of the 8(a) portion of the Small Business Act. The reform pushes out more strictly. It reduces the years of participation and so forth.

If you used that as a certification, then it would mean that those businesses that may no longer be in 8(a) program, but who are definitely minority owned, small, or women owned, small, would not be eligible—would not have that presumption, and that would be totally unfair because at the rate you are going we will be proceeding, and of the reform of 8(a) you will soon end up with far more small minority owned, or small women-owned businesses outside of 8(a) certification that would be within, which then would have the effect of making it more difficult to comply with goals that are being placed on more and more departments, and in more and more areas of business activity. It would then be restrictive rather than helpful.

Mr. ANGELO. This is only meant, Mr. Savage, as an example of some possible legislation that could deal with the issue that Ms. Wilder addresses regarding the certification problems that MBE's, DBE's, and WBE's have.

Now, we do not want to restrict it to 8(a). I cite it because it is an example, so that is all.

Mr. GUERRERO. If I could comment on that just a second. It is a very good example because one of my pet bugaboos is certification, and I am on the same wavelength with Congressman Savage. We have some very restrictive certification processes out there that I think are designed to exclude minorities from bidding. They ask blacks for their birth certificate to show they are black. They ask Hispanics for their birth certificate, and it does not say Hispanic on their birth certificate; it says Caucasian, and they say, "well, my God, you are not Hispanic." They ask for your Army discharge, and it says Caucasian on it. They ask for all of this paperwork, and it seems like an effort to deter you from continuing in the process.

Now, one of the ways around that has been the fact that if you were 8(a) certified in California particularly, you could say, "Hey, let us quit playing games. I am 8(a) certified." And those restrictive agencies accepted that certification. The problem is that the one that Congressman Savage raised is once you were out of the 8(a) program you were back in that windmill again.

If a company goes through the 8(a) certification process, and is 8(a) certified, by God, that company if it does not change ownership, that should be a minority company, or woman-owned company, to the end of time, or until it changes, and I think that is where the Congressman was coming from.

Mr. SAVAGE. Well, except for size standards.

Mr. GUERRERO. Except for size standards. That is right.

Mr. ANGELO. We agree with that, and the intent of this provision was to abolish a lot of the processes that you talk about that effectively act as barriers for MBE's, and DBE's, et cetera, and by having a Federal preemptive provision, once you are certified at the Federal level you can do anything you want on a federally funded project.

Thank you, Mr. Chairman.

Mr. HAYES. I thank the two panelists for their testimony. It has been excellent, and I apologize for any inconvenience we might have caused you because of the delay.

Mr. GUERRERO. You did not cause us any. We were very happy to be here.

Ms. WILDER. Thank you. If you are holding hearings in Chicago, I will be more than happy to provide you with lists of our members, and other women contractors in Chicago, to assist you in your hearings, sir, if you would like that, and Women Construction Owners and Executives is having their annual meeting here in Washington between the 18th and 22d of this month, and I am sure all of your offices have received an invitation to our legislative reception, and again, I would like to invite you to come meet some of our members.

I appreciate this opportunity very much. Thank you.

Mr. HAYES. Thanks for the invitation. Thank you very much.

The final two panelists are Ms. Joann Payne, if you would come forward, from Pennsylvania's Women Contracting Association, and Ms. Patricia Shea, president of P.K. Contracting, Michigan Women's Contractors. If you would come forward please.

Chairman SKELTON. We will begin with you, Ms. Payne.

TESTIMONY OF JOANN PAYNE, PRESIDENT, PSM CONSULTANTS

Ms. PAYNE. I apologize, but I heard about the hearing Monday afternoon. I was in Tallahassee, FL, on a totally different matter, and I rushed here to testify, and, therefore, my secretary and all my files basically are in Little Rock, AR, where I am originally from. So, I will give you a copy of my text.

Chairman SKELTON. You may rest assured that your entire statement will become part of the record, if there will be no objection.

Ms. PAYNE. Thank you.

Before I begin, if I may hand out to the committee a draft, and these are from the Department of Transportation Federal Highway Administration.

I guess before I start my official statement I have some comments, if I may, on several things that have been said, one of which is I feel that I am probably the only individual in the United States that has had an opportunity to deal with Congress, to deal with the Secretary of Transportation's office, to deal with Federal Highway Administration, to deal with the State, the States, and the DBE themselves. I have experience in all five of those levels.

I would like to submit to this committee, if I may have a copy of my statement back, a written statement that I presented to the Secretary of Transportation's office, and the Federal Highway Administration, on the problems of the DBE program with certification, requalification, a whole—you addressed some of these issues, and I have a statement that I presented that I would like for this committee to have an opportunity to read.

Mr. SAVAGE. Mr. Chairman, may I ask, would Ms. Payne permit our aides to take that in the back and make copies quickly, and we will get it back to you by the time——

Ms. PAYNE. I appreciate it; yes. It is seven pages, typewritten, on all of the problems I have seen in the program, and what I feel needs to be done.

Mr. HAYES. Is that going to be the basis of your testimony?

Ms. PAYNE. No, sir.

The other item that I would like to say is that I have a copy of the briefing for the Dan Ryan Freeway, Expressway, if you would like to have it, a list of the contractors, and the list of the subcontractors.

I also might like to say that each of these subcontractors are legitimate owned businesses, certified. They are not fronts, and they are not chains.

Mr. HAYES. Do you have copies, or is that part of—can we have copies of that made too? We would like to have it.

Ms. PAYNE. Yes; of course.

Mr. HAYES. Is the Chair to understand you are suggesting or recommend that copies of each of these statements be entered into the record?

Ms. PAYNE. Yes.

Mr. HAYES. Is there objection? Let us hold any response to that until we see it.

Ms. PAYNE. OK.

Mr. SAVAGE. No objection, Mr. Chairman, to it being in the record, even if it is not correct.

Ms. PAYNE. Well, that was provided to me by Federal Highway Administration, so I assume that it is very correct.

Chairman SKELTON. Well, do not presume. Do not be too presumptuous.

Ms. PAYNE. Well, they are very dependable. And it has been my——

Chairman SKELTON. It is a matter of opinion. We have had some conflict in testimony. I hope you do not press the question any further.

Ms. PAYNE. Yes, sir. No; I certainly will not, sir.

I do appreciate this opportunity to speak because I think you are going to find my testimony being totally different from what you have heard thus far, and I appreciate each of you staying, and I am open to questions, and, well, I guess we should get on with it.

One thing I wanted to sort of correct. Congressman Conyers made a statement about the *x* amount, 800,000 minorities, and 3 million women-owned businesses around the country, and I am sure that is absolutely correct. However, in the DBE program, and in the highway construction industry, we are talking about active 15,000 DBE's, or minorities, and a little over 2,000 WBE's.

Because my text does not really address that issue, and why I know those figures, Mr. Conyers, is because prior to 1987, I guess when the Hammerschmidt amendment was added, and the Senate had this provision in their bill——

Mr. SAVAGE. Excuse me, Mr. Chairman. If I might interrupt. There has become some confusion about your statement here.

Ms. PAYNE. That is not—I am sorry.

Mr. SAVAGE. You said you had a seven page statement you made to the Secretary of Transportation?

Ms. PAYNE. Yes.

Mr. SAVAGE. Did you give her this——

Ms. PAYNE. Yes; that is it.

I apologize. If you will return that to me, I will collect all seven pages. I pulled it out of my folder. Let me get that to you after.

Mr. HAYES. Why do you not give it to her now, see, then she can be making copies while you are making your statement, and she can give it right back to you before you finish.

Ms. PAYNE. I apologize.

Mr. SAVAGE. It will only take a few minutes.

Ms. PAYNE. OK. Here. Why do we not try this one instead.

Mr. SAVAGE. Thank you, Mr. Chairman.

Ms. PAYNE. Also, I would like to clarify to justify my position on how I know those figures. They are approximate, Mr. Conyers. I will be the first to admit that. But in finding out how many—because of a project I was working on—find out how many DBE's in the country, and WBE's in 1986, in 1985 and 1986, I sent a letter to all of the States requesting their DBE list, and about 45 States responded, and from there I just started counting.

That is how the figure—it is an approximate figure of 15,000 active DBE participants, and about 2,000 WBE participants in the DBE program. I want to clarify that.

Also, the statement was made that Senator Steve Simms of Idaho offered an amendment on the floor of the Senate. This amendment was like the Hammerschmidt amendment. That is incorrect. The Senate bill already had the language in the bill. It came out of full committee, and I testified to that committee. So, there is a record of women's position on the inclusion of women into the DBE program.

Also, the certification that Deborah Wilder addressed, and she did indeed articulate it well; however, we already have, basically, a uniform certification program. The Federal regs make sure that we have a uniform certification program. It is not as uniform as it should be, and there are some problems with it. I am telling you that. But basically, we do have the same papers to fill out in most of the 50 States. I want to stress that.

Also, I would like to stress that what has developed is a check and balance system. This committee, as well as many other committees, are concerned about fronts and shams. Well, women who have been applying for certification into the DBE program since April 2, 1987, are having a very difficult time getting into the program because those implementing the program are very sensitive to the issues, and what is going on, and the potential of fronts. It is a lot easier to hatch a reincarnated WBE firm than, say, a minority firm.

So, I do not really think you need to worry about fronts and shams. What has developed is a check and balance system, and I might add for an example, I would like to give you a couple of examples, the State of Texas since April 2, 1987, they have denied 90 percent of all women applying for certification in the DBE program. The State of Arkansas has denied 70 percent of all women-owned businesses who have applied for DBE status.

That is happening all across the country because those implementing the program are very sensitive to this issue. So, I just wanted to stress that.

Also, the good faith effort. The good faith effort in most States for other projects might work, but not for this one. Basically the prime contractor goes and finds 10 percent. Sometimes there are exceptions to the rule, but very seldom.

Of course, I approve of one goal, and I would like now, if I may, to make my formal statement, and be prepared.

Thank you for allowing me the opportunity to speak to the Small Business Subcommittee on Procurement, Innovation, and Minority Enterprise Development. My name is Joann Payne, president of PSM Consultants.

Mr. HAYES. Would you yield just a minute. It might be helpful, and it might expedite some time, and we are going to be pressed for a vote some time soon, if you could just give us a highlight of your prepared statement rather than to read it verbatim.

Ms. PAYNE. OK. I wanted to say that I represent Michigan—I represent many women, several hundred of them, I might add, including some that Deborah Wilder also represents, as well as Ms. Shea here.

The inclusion of women in the disadvantaged business enterprise program is very near and dear to my heart. It is very important to those women in the highway construction industry who have had to fight for equality, and recognition as individuals.

Historically, minorities and women-owned businesses have had a difficult time competing fairly in the highway construction industry. Prior to 1980, both minorities and women-owned highway construction related businesses, however, these businesses were denied entrance—Mr. Savage, no one has a copy of my testimony. I apologize. I noticed that—I flew in from Tallahassee and I did not have a chance to even—most of it is handwritten, so I will submit it to you immediately.

Mr. HAYES. With the understanding that the entire statement will be received and will be made a part of the record.

Ms. PAYNE. Yes, sir.

However, these businesses were denied entrance into the good old boy system. Minorities and women-owned businesses were small in numbers. To afford equal opportunity for minorities and women in the highway construction industry, Federal Highway Administration established a good faith regulatory program for both minorities and women-owned businesses. Even though the good faith programs were established separately, their programs were created because of a basic knowledge that minorities and women-owned businesses had been discriminated against by prime contractors who had established strong relationships with other subcontractors.

Also, because of the ethnic and sex discrimination practiced by lending institutions, it was very difficult for minorities and women to secure bank loans, and bonding insurance.

Under the guidance of the good faith efforts of the Federal Highway Administration, minorities and women were assimilated into the highway construction industry. In 1982, and prior to the creation of the disadvantaged business enterprise program, the good faith regulatory MBE program reached a national goal of 5.3 percent, and the WBE program reached a national goal of 3 percent.

Now, this was regulatory prior to the surface transportation, a difference of 2.3 percent. These figures can be found in your charts that I have provided for you. I did have those in my folder.

After the passage of section 105(f) of the 1982 Highway bill, which excluded women as a disadvantaged group, the Federal Highway Administration continued the good faith effort regulatory program for WBE's. In 1986 the numbers for the two programs had changed dramatically. The DBE program under Congress' 10-percent mandate reached a national goal of 12.3 percent, or $1.3 billion. In the WBE good faith regulatory program, reached a national average of 3 percent, or $326 million, a difference of 9.3 percent, and approximately $1 billion.

It is evident from the charts that from 1983 to 1986 minority participation grew tremendously, and women participation did not grow at all.

Now, I might add here and insert there is nothing wrong with the program with minorities growing. I am just trying to show what happened because one was excluded. I wanted to preference that.

The DBE program with a mandate goal of 10 percent had discriminated against the growth and development of the WBE regulatory program. Because of the discrimination, Congress acted fairly and responsibly when they finally included women-owned businesses in the disadvantaged business enterprise program. This action by Congress was not taken lightly, nor was it conceived in deception. Women worked openly in both the House of Representatives and the U.S. Senate to have women included in the DBE program.

Women testified, and women being myself, I might add, testified before the Senate Subcommittee on Transportation in 1986 outlining the discrimination women were experiencing in the highway construction industry, and reasons why they should be included in the DBE program. The Senate Full Committee on Environment and Transportation responded positively, and included women as part of the DBE program.

Also, in 1986, Congressman John Paul Hammerschmidt of Arkansas offered a floor amendment to the House Surface Transportation and Uniform Relocation Assistance Act which made women-owned businesses eligible for the DBE program, and defined women as disadvantaged persons for the purpose of this act.

The Hammerschmidt amendment had exactly the same language offered in the Senate bill. The Hammerschmidt amendment was cleared with Congressman Parren Mitchell, and the Black Caucus, before Congressman Hammerschmidt offered it to the House floor. The amendment passed without any opposition.

Congress acted wisely, and responsibly, by including all groups in the DBE program who had been denied an opportunity to compete equally in the marketplace. Congress also acted fairly when they combined the two disadvantaged groups into one goal, and did not raise the 10-percent goal.

The 10-percent minimum goal is what I consider the ground floor. It is not the ceiling. The States have an option to raise their DBE goal above the 10-percent goal, and should do so if historically they have reached a DBE goal and a WBE goal of higher than 10 percent. In fact, there are 15 States right now that have goals higher than 10 percent. I might also say Michigan is one of them, and you can talk to this lady right here.

But for those States such as Montana, and Idaho, who have small minority populations, they should also have an option to stay at a minimum 10 percent.

I might also add it has helped the highway construction industry by inducing more competition, and prices are lower, and more competitive by adding women—assimilating them into the program.

I might also remind you we are not talking about a lot of women. We are talking about 2,000 versus 15,000.

Even though Congress passed the Surface Transportation and Uniform Relocation Assistance Act on April 2, 1987, women did not participate fully as DBE's until January 1988. Some States included women immediately. However, others did not comply with the law until after October 1987; namely, New York, Michigan, and California.

The first quarterly figures from Federal Highway Administration, and that is on the chart, the other chart that you have, shows that women have not had an adverse impact on minority-owned firms. MBE participation for the first quarter was 12.4 percent. Women participation for the first quarter was 3.2 percent. These figures reflect the argument that the Conyers amendment, which would guarantee that racial and ethnic minorities would receive 65 percent of the benefits set aside under the Surface Transportation and Relocation Assistance Act, is premature, and conceived, from my opinion, unfounded fear and allegations on the part of the minority contractors, minority association leaders, and some House of Representative staff members.

The new DBE program is not yet a year old. In fact, in actuality, the program—you would consider the program starting in October 1987, but in reality three of the largest States that have a large minority population and WBE population, did not assimilate their women until January. So you need some more time here.

There is not enough information available to make a fair and reasonable decision on the merits of any type of change. Also, the Conyers amendment, in my opinion, is discriminatory. By instituting separate goals, the Conyers amendment will discriminate against women. Women must be afforded the same opportunities to grow and develop as minorities.

How could Congress do anything less? If the Conyers amendment was allowed to pass, Congress would in essence have shown favoritism toward one segment of the disadvantaged group.

If I remember my history correct, the Supreme Court in 1954 declared that separate but equal was not indeed equal, and I do want you to think about that. Just because you separate, it does not make things equal. It makes things equal when everyone has the opportunity to compete fairly.

I believe the Conyers amendment should be tabled permanently, and the DBE issue referred to the House Public Works Committee, or this committee, for further study.

The Dan Ryan Expressway project was an unfortunate experience for the minorities in Chicago, but the events in Chicago are the same type of experience women have encountered since 1980. In fact, the WBE's in New York can tell you first hand about discrimination.

A project in New York was let to contract on December 17, 1987. The project had separate goals—DBE goal of 15 percent, and a WBE goal of 2 percent. The New York project, like the Dan Ryan project, is a large reconstruction job with a large set-aside for DBE's. Even though women were added to the DBE program on April 2, 1987, New York and several other States refused to comply with the new law.

Finally, Ray Barnhard, then the Federal Highway Administrator, sent the States a final decree. On August 26, 1987, Mr. Barnhard basically stated that any project authorized after October 1, 1987, shall have a single DBE goal.

On September 25, 1987, 5 days before the cutoff date, New York State, through the New York Federal Highway Administrator, Director, authorized a large reconstruction project in Rochester, NY. However, the project was not let to contract until December 17, 1987, 8 months after the passage of 106(c), and 4 months after the August 26 memo, and 3 months after the final rule in the Federal Register, which was dated October 21, 1987.

The WBE's in New York tried desperately to be included in the December letting, but they were denied at every level. Just like the minorities in Chicago, the women in New York felt they had been purposely excluded. The reason for their outrage was the fact that the authorization came 5 days before the cutoff date, and the contracts were not let until December. They felt this was a direct effort on the part of those people in power that implemented the DBE program to exclude women from the large project, which the women had every right to be involved in. The women did not get press, or congressional attention, even though we tried to get the attention.

If the minorities were to walk in the shoes of the women right now, and what has happened to them, and had just been included in a program that was going to finally afford them equal opportunity, and had to endure the delays, the discriminations, and the false accusations, and now Members of Congress are trying to legislate change in a program which has not had any opportunity to develop, I wonder how minorities would feel right now.

Well, if you really want to know the answer, ask a WBE. She can certainly tell you.

I also basically have already told you that I have——

Mr. HAYES. If you could, the Chair has been rather liberal with time.

Ms. PAYNE. Yes, sir; I am finishing.

Mr. HAYES. But try to conclude. Go ahead and make your conclusion.

Ms. PAYNE. I was just—well, I was just going to say that you have the problems that I have—had an opportunity to witness myself in the DBE program, and you have my statement to the Secretary of Transportation's office, and I did that because the regulations do need revising, and they are in bad shape.

Any questions you would like to ask me, I will be more than happy to do so.

[Ms. Payne's statement, with attachments, may be found in the appendix.]

Mr. HAYES. You raised in your testimony some rather direct and statistical information that may be necessary—I think we will deviate from what is normal procedure to hear both witnesses. I think in order to keep in mind, since we do not have before us the written testimony, and so we will not lose some of the direct questions that you have thrown at us, the allegations that you have thrown at us in some instances, we may question you at this time before going to you, Ms. Shea, if you do not mind.

Ms. SHEA. Yes; thank you.

Mr. HAYES. I want to ask a couple of questions of you, Ms. Payne. Would you support the elimination of the set-aside program?

Ms. PAYNE. No, sir; I would not.

Mr. HAYES. Would you support raising the 10-percent goal?

Ms. PAYNE. Yes, sir.

Mr. HAYES. Currently defined, you would?

Ms. PAYNE. Yes.

Mr. HAYES. To 15 percent?

Ms. PAYNE. Yes, sir.

Mr. HAYES. All right. The situations you referred to in New York and Dan Ryan, inevitable with the combined goals?

Ms. PAYNE. No, sir.

Mr. HAYES. You do not think so?

Ms. PAYNE. I guess I come from a very different perspective. I do not believe that women and minorities should have the protection. I believe that they should have protection for the set-aside. I agree with that 110 percent, most definitely. Women and minorities have problems out there in the highway construction industry. There is no doubt about it, and everyone deserves an equal opportunity.

However, Congress, in my opinion, has acted fairly. They have combined all of the disadvantaged groups, in my opinion, into one, and now I feel that these groups do not need any more protection. I believe it is important that they go out and they compete, and they get what they can get.

I might also add that I get very frustrated with the system because what happens Congress has a 10-percent goal; then we have the Secretary of Transportation who writes the regulations; and then we have Federal Highway Administration that implements the regulations; and then we have the States who interpret the regulations; and then we have the DBE's themselves.

What Congress' intent, and what comes down to the end product, in many cases are two different things. I truly believe that if you tighten the certification program up to some degree, I do believe that if you require, not experience as part of certification, which women, by the way, always are denied certification because of lack of experience, but if you remove that, but you require within a year, prequalification. In other words, those companies that are out there and certified and legitimate, that they give them the tools to know what to do to perform properly. That is minority as well as women, everyone.

Mr. HAYES. Your point could be well taken if all contractors were on the same footing, but they are not, even within the minorities. In the last report that I received from the Illinois Department of Transportation, not one black woman contractor had been able to get a contract.

Ms. PAYNE. Mr. Savage discussed minority women, and being part of minorities or women—under the Federal regulations she may choose one at a time, but she does have an option to fluctuate back and forth, and she should do so. But she should not be able to bid as a DBE and as a WBE in the same project. She cannot do that now, but she should be able to have that option.

Congressman Hayes, I think I would have to disagree with you about minority women. From my experience minority women that are out there, and they are in small numbers, as there are white women in small numbers, compared to the minority group, they do get many contracts on the average.

Mr. HAYES. We were specifically talking about Dan Ryan, and the question has been raised—I think the figures that we have given, at least at that point, were correct.

Ms. PAYNE. Well, I cannot speak on that because——

Mr. HAYES. Previous testimony said the women had double whammy.

Ms. PAYNE. Not me. I do not know.

Mr. HAYES. Mr. Savage.

Mr. SAVAGE. Ms. Payne.

Ms. PAYNE. Yes, sir.

Mr. SAVAGE. Let us see. I have questions all over the place.

Now, let me make sure I understand your testimony.

Ms. PAYNE. Yes, sir.

Mr. SAVAGE. You point out that you said that the Senate committee included women in its set-aside?

Ms. PAYNE. Yes, sir.

Mr. SAVAGE. You are saying that Senate bill 2405 included a minority set-aside?

Ms. PAYNE. I apologize again. All of my files are in Little Rock, AR, and I left from Tallahassee, FL, but whatever the Senate bill that came out of the full committee, that was voted on the floor of the Senate, has the provision in it.

Mr. SAVAGE. I think, because the bill that finally passed was not the Senate bill; it was the House bill. The Senate bill fell, right?

Ms. PAYNE. No, sir.

Mr. SAVAGE. As 2405 failed to pass on September 24, 1986.

Ms. PAYNE. No; how do you have a bill here?

Mr. SAVAGE. The bill——

Ms. **Payne**. The Senate bill passed——

Mr. **Savage**. The bill that finally was adopted was H.R. 3129, which had been amended on the floor on August 6 by Hammerschmidt. What happened was, if you recall, both the Senate bill and the House bill came out of committee and went to the respective floors in 1986, but the highway bill itself was not passed until 1987.

Ms. **Payne**. Yes, sir; I realize that.

Mr. **Savage**. The bill never went to the President in 1986 because it did not have a Senate approval of the bill. We never came out of conference with the bill.

Ms. **Payne**. Yes, sir.

Mr. **Savage**. In 1987 the House then, without further committee hearing, resubmitted this H.R. 3129 under another number, and it was immediately passed on the floor by overwhelming vote, and further can support the clause to the Hammerschmidt amendment, had been included in it, and then went and got approval in the Senate side, and then the President vetoed it, and then it came back and overruled the veto in 1987, not 1986.

Ms. **Payne**. No, sir; what happened was the Senate bill passed, and the House bill passed, and they went to conference, and out of the conference came the bill that you are referring to.

Now, the Hammerschmidt bill was in August 1986.

Mr. **Savage**. That is right.

Ms. **Payne**. But the Senate bill passed by the Senate, had the exact language——

Mr. **Savage**. No; the Senate bill 2405 that first came out of the committee, did not pass. It failed in 1986. Then the Senate came back in 1987 and passed the bill. But the Hammerschmidt amendment that was included in H.R. 3129 on the floor, passed in 1986 and repassed in 1987.

Ms. **Payne**. Yes, sir.

Mr. **Savage**. No. Let me ask you another question. You said with regard to the Hammerschmidt——

Ms. **Payne**. Excuse me, sir. Do you have the Congressional Record in your hand, because the Senate bill passed, and the House bill passed, and they went to conference.

Mr. **Savage**. We are talking about different years though, different years.

Ms. **Payne**. You are talking about October 1986.

Mr. **Savage**. No; the Senate bill failed on September 24, 1986, which is why we did not get a bill in 1986. The House bill passed in 1986 on the House side, but we never got a bill. I never got a bill to go to the President.

What happened then, we came back in 1987, the House repassed its version, and the Senate then passed its version. Then you went to conference in 1987. But that is a small detail.

Let me come back to what is really important. What is really important—I will get to the Hammerschmidt amendment—is that you said that Parren Mitchell, Congressman Mitchell, approved the Hammerschmidt amendment.

Ms. **Payne**. Yes, sir.

Mr. **Savage**. How do you know that?

Ms. PAYNE. How do I know that? One thing, I was there, and the second thing——

Mr. SAVAGE. By there, what do you mean?

Ms. PAYNE. I talked to Mr. Mitchell myself, and his staff, and Mr. Hammerschmidt.

Mr. SAVAGE. This is during the time when Hammerschmidt was preparing his amendment?

Ms. PAYNE. Yes, sir; and you know, Mr. Savage, the procedure. Mr. Howard, nor Mr. Hammerschmidt, would have passed this amendment and OK'd it without Mr. Mitchell's approval, and the Black Caucus approval.

Mr. SAVAGE. I understand that. What I am trying to discover is how you knew this. You say you were there.

Ms. PAYNE. I lobbied for the inclusion of women in the DBE program.

Mr. SAVAGE. To Congressman Mitchell?

Ms. PAYNE. Yes, sir.

Mr. SAVAGE. To his staff director, or to him personally?

Ms. PAYNE. All, everyone.

Mr. SAVAGE. No; to Mr. Mitchell personally?

Ms. PAYNE. Yes.

Mr. SAVAGE. And Mr. Mitchell personally agreed with you, to include the Hammerschmidt amendment?

Ms. PAYNE. Yes, sir.

Mr. SAVAGE. Now, you went further than that and said that the Congressional Black Caucus also supported the Hammerschmidt amendment.

Ms. PAYNE. Yes, sir.

Mr. SAVAGE. Now, where did you get that from?

Ms. PAYNE. Well, Mr. Hammerschmidt and his office OK'd the information from—got the approval from the Black Caucus.

Mr. SAVAGE. Now, tell me about that. How do you know he got approval from the Black Caucus?

Ms. PAYNE. Well, how do I know exactly?

Mr. SAVAGE. Yes.

Ms. PAYNE. Because again I was informed immediately what had happened.

I also have a statement——

Mr. SAVAGE. Just a moment.

Ms. PAYNE. I also have a statement to Mr. John Paul Hammerschmidt from his staff director, Michael Toohey, and in this statement to Mr. Hammerschmidt on what happened with the Dan Ryan Freeway, and the Hammerschmidt amendment, it also says in this with Mr. Hammerschmidt's letterhead, and I will certainly submit this to you and let you have this, it says that——

Mr. SAVAGE. Just read the——

Ms. PAYNE. Yes; just a moment. "The amendment was cleared with Congressman Parren Mitchell and the Black Caucus."

Mr. SAVAGE. Now, who signed that letter?

Ms. PAYNE. You may have this. This was——

Mr. SAVAGE. Who signed that?

Ms. PAYNE. This was a memo to Congressman John Paul Hammerschmidt from the Public Works and Transportation Committee on an update——

Mr. Savage. From whom?

Ms. Payne. From Mike Toohey, the staff director.

Mr. Savage. Now, Mr. Chairman, if I might, I happen to be a member of the Congressional Black Caucus, as are you, and Congressman Conyers. I do not know of any approval by the Congressional Black Caucus of the Hammerschmidt amendment, nor any discussion of the Hammerschmidt amendment by the Congressional Black Caucus.

Furthermore, I am a member of the Congressional Black Caucus, and if they had discussed it would have voted against it. Do you know of any discussion with the Congressional Black Caucus of the Hammerschmidt amendment?

Mr. Hayes. I certainly do not.

Mr. Savage. And you, Congressman Conyers?

Mr. Conyers. Not that I know of.

Mr. Savage. So, you are saying here, you are relying on a statement from a staff member of Congressman Hammerschmidt regarding the Congressional Black Caucus. I ask you how did you know the Congressional Black Caucus approved it?

Ms. Payne. Let me stress again, I participated actively in all of this. I went to Congressman Mitchell, and he——

Mr. Savage. Ms. Payne, let us get something straight. I am not talking about Congressman Mitchell. I am aware of some of that lobbying. But I am separating that out from the other portion of your statement. You said that the Hammerschmidt amendment had the support of both Congressman Mitchell and the Congressional Black Caucus.

Ms. Payne. Yes, sir.

Mr. Savage. I ask you how do you know—what is the basis of your statement that the Congressional Black Caucus supported the Hammerschmidt amendment?

Ms. Payne. I was informed by Mr. Mitchell and Hammerschmidt's office that the leaders, the Black Caucus, agreed to this particular amendment, and it was OK'd through them, and when it happened, and as you can see, it is verified by the office memo.

Mr. Savage. Let me say to you that is not the best source, a staff member from Congressman Hammerschmidt. I say to you as a member of the Congressional Black Caucus, the Congressional Black Caucus never considered nor approved the Hammerschmidt amendment.

Ms. Payne. Well, you will have to take that issue up with Mr. Hammerschmidt because his office——

Mr. Savage. No; we do not have to take it up with Mr. Hammerschmidt, ma'am. We do not make the assertion. You made the assertion.

Ms. Payne. I made the assertion on my knowledge, yes, sir.

Mr. Savage. Well, what you should assert, ma'am, is—and this is all you stated you know, you should assert not that the Congressional Black Caucus approved the Hammerschmidt amendment, but that Hammerschmidt claimed that the Congressional Black Caucus approved his amendment. Then you would be saying what you know.

Ms. Payne. Mr. Savage, I will say again, Mr. Howard, Congressman Howard, and Congressman John Paul Hammerschmidt, as well as Congressmen Anderson, and Shuster, they would never have approved and allowed this amendment to go on the floor if it did not get approval of Mr. Mitchell and the Black Caucus.

Mr. SAVAGE. Well, Ms. Payne, I have to——

Mr. HAYES. Will the gentleman yield? I just want to respond to one part of the questions you raise, that nor would the Congressional Black Caucus approve of the Hammerschmidt amendment without having a discussion about it; there was no prior discussion.

Mr. SAVAGE. I will go further, Mr. Chairman. I just talked to Chairman Glen Anderson this week, and he verifies the support of this amendment by Congressman Mitchell, does not claim that the Congressional Black Caucus supported the Hammerschmidt amendment. So, he did not tell you that.

Now, Congressman Hammerschmidt's office may have contended that, and if that is the basis of your statement, then you should correct your statement to say that you know Congressman Hammerschmidt claimed that the Congressional Black Caucus supported it. Do not say that you know the Congressional Black Caucus supported it.

Let me go to another couple of questions. With regard to the Dan Ryan, you gave us some figures here. Now, it is my understanding that the Walsh Construction Co. is the company that handled the contract with regard to the Dan Ryan rehabilitation. Is that correct?

Ms. PAYNE. One of two contractors.

Mr. SAVAGE. Madden is also involved?

Ms. PAYNE. Yes, sir.

Mr. SAVAGE. Both the contract for the rehabilitation was divided between the two, is that correct?

Ms. PAYNE. Yes; and they received it because they were the lowest bidder.

Mr. SAVAGE. The two?

Ms. PAYNE. The two prime contractors.

Mr. SAVAGE. Right, and then they subbed, right? According to these figures you are saying that these are all the WBE's and DBE's that are involved in the sub, is that right?

Ms. PAYNE. No; these are the subs that actually were awarded the contract.

Mr. SAVAGE. That is what I am saying. These are all that participated?

Ms. PAYNE. Yes, sir.

Mr. SAVAGE. Now, you have a category here, three categories, black, Hispanic, and women. Now, you have two kinds of women, three kinds really. You have white, Hispanic, and black. We do not make any distinction among these women as to which they are. Do you have any figures that would make that distinction?

Ms. PAYNE. No, sir. Again, the minority women can choose which status they prefer to bid. They may be a minority, or they may be WBE.

Mr. SAVAGE. No; what I am getting at is if any of these choose the status as minority women to bid?

Ms. PAYNE. No; the women are white women.

Mr. SAVAGE. I beg your pardon?

Ms. PAYNE. The women you see listed are white women.

Mr. SAVAGE. All right. Now, a problem with the Dan Ryan, as your figures even substantiate, is that you are talking about a total of $12.7 million, right? That is what this total comes to, the subs you listed here.

Ms. PAYNE. OK.

Mr. SAVAGE. Of that amount $9 million went to white women.

Ms. PAYNE. Yes, sir.

Mr. SAVAGE. Now, that is the complaint that has promoted this hearing to occur, that when white women were included by a Republican-sponsored amendment, and incidentally let me add, Mr. Chairman, for the record, I have also talked to Congressman Mitchell about this, and Congressman Mitchell indicated to me that he did not favor the inclusion of white women in the set-aside, but rather felt that he had not enough votes to defeat it on the floor, and that a battle against it would jeopardize the set-aside all together, including the set-aside for minorities.

Now, let me go a step further, and incidentally, I talked with the chairman of the Transportation Committee, Glen Anderson, the one you claim told you that the caucus supported the women inclusion——

Ms. PAYNE. No, sir; I did not say that.

Mr. SAVAGE. Then I thought you said it.

Ms. PAYNE. No, sir; I did not.

Mr. SAVAGE. Then it is only Hammerschmidt as your source.

Ms. PAYNE. His office.

Mr. SAVAGE. That may not be the most reliable source because he does not have the most—the best relationship with the Congressional Black Caucus, and push this amendment on the floor, not in committee, on the floor.

Ms. PAYNE. If I remember correctly, sir, there were no hearings on this bill.

Mr. SAVAGE. No, no, no; Ms. Payne, you have got a lot of—let me correct you. I am a member of the Public Works and Transportation Committee, and there were full hearings on this bill, but not in 1987.

Ms. PAYNE. Yes, sir.

Mr. SAVAGE. See, the confusion is—let me show you what the confusion is. The House bill was passed in 1986.

Ms. PAYNE. Yes, sir.

Mr. SAVAGE. Unlike on the Senate side. They were full hearings. In fact, the House bill was submitted to committee on July 31, 1985.

Ms. PAYNE. Yes, sir; and you had hearings——

Mr. SAVAGE. Had hearings.

Now, what happened is that when the Senate bill failed to pass in 1986, the House did not have any need—the Public Works and Transportation Committee had no need for further hearings because it intended to submit the very same bill that it passed in the House in 1986, and that is all they did. Gave it another number, and submitted the same bill, so further hearings were unnecessary.

Ms. PAYNE. Yes, sir; I agree with that, and I will add that after that passage, and because the Public Works did not have any more hearings, it was at that point that I entered the picture lobbying.

Since I have been lobbying for this issue, there have not been any hearings on the public works side of this issue.

Mr. SAVAGE. That is not quite the same as saying there were no hearings. There is a whole lot of things that happened maybe before you started.

Ms. PAYNE. Yes, sir; I understand that, sir.

Mr. SAVAGE. That is why when you are talking about the Senate bill having the set-aside including women in it, you are talking about 1987. But the Hammerschmidt amendment was adopted in 1986.

Ms. PAYNE. Yes, sir.

Mr. SAVAGE. That is my point.

Ms. PAYNE. Yes, sir; August 9, 1986.

Mr. SAVAGE. That is right.

Now, let me go back to the Dan Ryan bill of the $12 million. What the complaint is, is that when women were included, white women, not just women—minority women were already included—but when white women were included, of the $12.7 million, $9 million went to white women. Now, that is what is considered to be unfair.

One of the reasons—let me just point out to you that women, white women that is, are not included in the DBE's in the presumption, and I am not here suggesting that white women do not have disadvantages, but why they were not included in the definition of minorities with regard to the Small Business Act, is because of figures like this. The whole concept of set-aside relates to the historically evolved differences and economic circumstances of segments of our population, and to show you the difference—for instance, in March 1988, the most——

Mr. HAYES. If you would just yield for just a minute. May I just suggest to you that I have been liberal again with time. We do have another colleague waiting in the wings with some questions, and I have asked the other witness to be somewhat tolerant with her time. We may have a chance for a second round. If you would finish up your question, and we will hear from our colleagues.

Mr. SAVAGE. That would be sufficient, Mr. Chairman. I thank you.

Mr. CONYERS. Mr. Chairman, may I be recognized? I would like to request—I am under some time obligations, and I would like the gentlewoman from Michigan to be able to testify. If she could give her testimony, and then I would be able to question both the witnesses.

Mr. HAYES. No problem. You go ahead, Ms. Shea.

TESTIMONY OF PATRICIA SHEA, PRESIDENT, P.K. CONTRACTING, MICHIGAN WOMEN'S CONTRACTORS

Ms. SHEA. Once again, thank you. I assume you all have my testimony. You do have it there on the desk.

Mr. HAYES. We do have it.

Ms. SHEA. I appreciate being allowed to speak before you today, and it is quite an opportunity, if not a privilege. My name is Pat Shea, and I am a DBE from Michigan.

Mr. HAYES. If you would follow the procedures I have suggested, in the beginning just sort of give the highlights of your testimony since we have it all, and the entire statement will be made a part of the record.

Ms. SHEA. I can do it maybe in 2 minutes. It is not going to take that long.

Mr. HAYES. All right.

Ms. SHEA. I am a DBE from Michigan. As representative for some of the women-owned businesses in Michigan, and as president of the newly formed Michigan Women Contractors Association, we strongly oppose the Conyers amendment. As you should be well aware, Michigan refused to acknowledge the fact that WBE's in our State were not recognized as DBE's until December 1987, and that is referring to the STURRA Act of April 1987.

The WBE's in my home State are voting citizens denied access to a program that should recognize and assist them. They were denied their right. Once again, a proposed separation is creating a biased picture. The Conyers amendment appears to be somewhat weighted to one side because of maybe an overreaction to the Dan Ryan Expressway incident.

Does this one small area of the United States necessitate a change in the program? Overreaction could be fatal. Do not use the excuse of making amends for past discrimination. The Conyers amendment creates and promotes discrimination.

In Michigan women can show evidence of discrimination. Women legitimately are trying to be part of the program. They are denied access to the program for frivolous and inventive reasons. If in the program, as a WBE, or now a DBE, women are harassed, intimidated, and interrogated, degraded, and treated with disdain through onsights, reviews, and eventually decertified, or not certified at all, because of the strategic endeavors of those administering the program.

It appears to be a pick and choose system. There seems to be a total control of biased individuals in authority. The women in Michigan reacted! Where are their civil and equal rights? Thus, the Michigan Women's Contractors Association was formed, and the strength of unity of just a few allowed the doors to open just a bit. It took 8 months for the women in Michigan to be recognized and allowed access as DBE's.

A public hearing was held on November 2, 1987, by the House Economic and Development Committee Subcommittee on Small Businesses. Minority and women-owned businesses were invited to give testimony on injustices experienced, if any, from a department within the Michigan Department of Transportation.

Many heartbreaking testimonies were given, but all under the intimidating presence of 15 MDOT employees, appointees, watchful eyes. Refer to the term of Gestapo tactics, storm trooping, et cetera. These terms are not an exaggeration.

Resulting from the hearing, the Michigan Highway Commission invited the Michigan Women's Contractors Association to present to them recommendations for improvements and/or changes in the certification process. This we did, and in addition to our recommendations, we also asked and received an increase from 10 percent to 15 percent in our State DBE goal. All States have the option of raising their 10-percent DBE goal. We, the women-owned businesses in Michigan, were successful in raising our State DBE goal.

We suggest giving the program time. Women have only just been added. We are qualified, bona fide, and very hardworking women business enterprises, and we need a chance to participate, but equally. A set-aside, if any, should be equally distributed, and not weighted or one-sided. Do not discriminate unnecessarily, but let us get back to the business of running our businesses. One who labors and toils reaps the harvest of their hard work.

With respect, for equality, I thank you.

Mr. HAYES. Mr. Conyers.

Mr. CONYERS. I thank you, Mr. Chairman. I want to thank the witnesses for their contributions, and I would like to just find out a little bit more, Ms. Shea, about the Michigan Women's Contractors in terms of where they are based. I understand how and why you got organized. How large are they, and where is your business activity located?

Ms. SHEA. My business is in Troy, MI. Now, we have a post office in Washington, and we are just sending membership, and getting membership in, so we are kind of right here right now. We are not totally organized.

Mr. CONYERS. Just getting started.

Ms. SHEA. Yes; we are.

Mr. CONYERS. Right.

Ms. SHEA. We have constitution bylaws, and all that legality.

Mr. CONYERS. Have you established a membership structure yet?

Ms. SHEA. It is coming in just from mailing out, and they are coming in, and I have got to check with the secretary on that.

Mr. CONYERS. OK. First of all, this is the first time I have been privileged to know that you did testify in a—I guess this was a State testimony in November in Lansing. Who was the chairman of that subcommittee?

Ms. SHEA. Was that not Debby Stabenow? Debby Stabenow.

Mr. CONYERS. OK.

Ms. SHEA. I am trying to think of the——

Ms. PAYNE. Representative Smith is the chairman of——

Ms. SHEA. Virgil Smith.

Ms. PAYNE. Virgil Smith is the chairman of the committee, and Ms. Stabenow is the subchairman.

Ms. SHEA. Lt. Governor Martha Griffis was there, and other legislators.

Ms. PAYNE. They also have a tape of that hearing.

Mr. CONYERS. Well, without trying to pull all of the women's contractors in Michigan together again to just rehash it, I would be privileged to get the thrust of the testimony that was made. I know Representative Virgil Smith. He comes from my congressional district, and I know of his concern about the matter.

I have been a very strong advocate of civil rights. As a matter of fact, I am on the Judiciary Committee, and I will be leaving here because of an interview that I have about racially motivated violence, which is the subject of some legislation that I have. So, I would just like to find out a little bit more about the hostility and the problems that women have encountered.

Has the Lt. Governor and her office been sympathetic to the problems that the women have been experiencing in business?

Ms. SHEA. Very much so.

Mr. CONYERS. And so has State Representative Smith and his committee by and large?

Ms. SHEA. Debby Stabenow and Virgil Smith—in fact, I do not have the letter with me, but, of course, they went along with us as far as our initiating the 15-percent increase in the State of Michigan.

We at one time went and talked to his office.

Ms. PAYNE. Right. Senator Smith, as well as Representative Stabenow, they worked with the Office of Small Business Liaison to clear up these problems, and were all on an ad hoc committee to try to clarify some of these problems. They admitted that there are definitely problems from this hearing, and they have been very active, Senator Smith, and Representative Stabenow. They worked directly with the Office of Small Business Liaison to try to initiate some changes.

Mr. CONYERS. Well, I am glad to hear that. Do I interpret then from your testimony that you are telling me that although they are not all cleared up yet, that the progress is being made, and——

Ms. SHEA. We are working on it, and the legislators, I believe, some of them, are working on it, as well as the Department of Transportation. I do not want to go any further and say——

Mr. CONYERS. You do not want to overcharacterize the progress that is being made?

Ms. SHEA. No; I do not want to overcharacterize the personnel within that office.

Mr. CONYERS. Well, you already have. You tell me they are pretty—I mean, the impression I get is that they have—they have been less than cooperative, and I do not know who you were referring to that was intimidating their presence there. I can assure you that can constitute some very serious intimidation, the people who you are going to be processing your applications from, and who you are going to be looking to for counseling and support. If they are there in a negative way, there is no question about that being intimidating.

Ms. SHEA. Very much so.

Mr. CONYERS. So, you are not prepared to say what the outcome of all this is going to be. All you know is that you have been joining—there are parties in Lansing trying to work and clear this up.

Ms. SHEA. Yes.

Mr. CONYERS. And that you have now been moved up to 15 percent?

Ms. SHEA. Yes; we are at a State goal of 15 percent.

Mr. CONYERS. Now, is your objection to the amendment that I offered last week based on the fact that the percentages are not equal, or is it based on the fact that there is a separation proposed?

Ms. SHEA. It just came to me Monday, and I read the amendment last night. I only had a couple hours sleep getting all this together. It is one-sided, as I said. I do not feel that it promotes unity between minority and women, such as WBE's. I think it is getting in their way.

Mr. CONYERS. You think it would create more competition and problems than exists under the present situation?

Ms. SHEA. Yes; Michigan is kind of right now—there are a lot of problems there, and it is unfortunate that there has to be these problems, but they are there, and they are existing with the WBE's. I know there are problems with minorities. I appreciate that fact. But there are also terrible problems with WBE's in trying to survive in this system.

Our biggest lettings are in April, or in the spring and in the fall. They were completely excluded. I know many WBE's are just falling by the wayside, and desperate, and they are legit, good, hard-working people.

Mr. CONYERS. These are women that are in the contracting construction industry.

Ms. SHEA. Yes.

Mr. CONYERS. Well, I would like you to continue to examine this subject with me. My offering of an amendment was not dispositive. You may have heard in earlier discussions that I think that really we should move them out separate so that we do not detract from the 10 percent federally that has been established for minorities. I would be more than willing to meet and discuss this with any of the people in Michigan, anywhere actually, but Michigan in particular, because my intention is to relieve the tensions and not aggravate them, or exacerbate them.

What I am trying to do is create two set-aside tracks so that there will not be any tensions whatsoever. The only way that I see out of the problems that we have now, especially in terms of the large pools of minority business women, and the very super pool of what is essentially white business women, is that the only way that this can be resolved is that we pull it out now and put them on two tracks.

This seems to be a consensus thing that is going around on the Hill. I cannot lay claim to any originality in this. What we do have to do is examine at what percentages this happened.

This is the first time that it has been suggested that by separating the two tracks, we would increase the tension. How do you imagine the tension would be examined if we separated out the women from this pool? How would that create any attention when we have the experience of Dan Ryan, and realize that a minority set-aside would be, in effect, wrecked, if not seriously damaged, unless we make these provisions separately.

I am saying this on the assumption that there are adequate hearings, and there is adequate proof that there is justification for the women's set-aside. I come to this subcommittee this term, and I have no way to reexamine the fact that up until now that women, unless they were minority and disadvantaged, were included in the general definition.

So, you have to realize there is a huge reconstruction being imposed upon the whole concept of set-asides once we bring in white women. That opens up the potential to a much larger group of the existing minorities that were originally the object of this corrective legislation.

Would either one of you like to comment on my observation?

Ms. PAYNE. I would like to say first that I would like to remind you that the first quarter figures there has been no change in women participation. It is about the same, 3.2. So, it has not had an adverse impact on minority program. That is at 12.6 versus 3.2.

So, at this point there has not been any impact. Now, as far as the Dan Ryan is concerned, that it unfortunate. However, the New York situation was unfortunate for women—$9 million worth of contracts went to minorities there, and basically we are talking about the very same thing.

Because the authorization in New York was prior to October 1, even though New York, Rochester, reconstruction program was not let until December 17, 1987, 5 days before the cutoff, they authorized it, and women could not participate. It was 15 and 2.

What I am trying to stress here is that both sides have some problems, both sides. In the beginning you are going to have these little bits of confrontations, but it is my belief, given time, it will average itself out.

Mr. CONYERS. Well, you have given two examples of the reason that I am proposing separate tracks. I mean, it may average itself out, but it will not help the people that felt that they were cut off from contracts, and that they were not permitted a fair opportunity to participate in the biddings on these activities.

So, that it seems to me, and I am not familiar at all with the New York situation, but if it is the object of complaints, it seems that a proposal similar to the kind that I have made would be helpful.

Now, the other part of this that intrigues me, for which I may not have a completion, and I will be through, Mr. Chairman, with my questions, is that all of this discussion revolves around contracting of the construction industry. So, what we may be doing unwittingly is that we may be opening up all women, all white women in all businesses merely based on the testimony and the problems that are being experienced in one industry.

The proposals that have been operative so far occur—operate, and we are down to the benefit of all white business women period, not limited to one industry. All of our testimony today comes from women in the building industries. So, what we are doing perhaps to the detriment to all of these programs, is that we are opening them up right straight across the board, and yet we are really focusing in our testimony, and in our concerns, around one particular industry.

Is there any possibility that by us tailoring a proposal that would focus in on construction, we might resolve some of the tensions and some of the problems in this area?

Ms. PAYNE. Congressman, the Hammerschmidt amendment, and the Senate provision, deals only with the disadvantaged business enterprise program in the Department of Transportation federally aided highway projects. I am sorry, it also deals with—well, no; that particular amendment just deals—that is it. It does not deal with all of the other small business legislation, and laws, and so on, and so forth.

Mr. CONYERS. Well, my understanding though is that in the Department of—Agency for Aid—the Agency for International Development with State, the FAA has already——

Ms. **Payne**. Yes, sir; but that was added.

Mr. **Conyers**. I know, but the question is going to involve whether all of these are going to be added across the board. I mean——

Mr. **Hayes**. It is inevitable it goes in that direction.

Mr. **Conyers**. I do not know how I am going to say that it is not valid in these other areas unless you are suggesting that they go on a case-by-case basis.

Ms. **Payne**. I am only addressing since I participate in the highway construction industry. By the way, I am a DBE in the highway construction industry, as well as a consultant. I have two companies.

I just stress there is discrimination toward minorities and women equally. They have the very same problems trying to be part of the good old boy system and deal with prime contractors. They have the same problems historically. They have had the same problems, and because of that particular case, and because of that particular problem, I believe that is why the DBE program was established regulatory, as well as mandatory.

So, I can only speak for that particular area because that is what I participate in.

Mr. **Hayes**. I would like to recognize—are you finished, Congressman?

Mr. **Conyers**. That is sufficient. I thank the witnesses.

Mr. **Hayes**. I would like to recognize Congressman Savage for one final question.

Mr. **Savage**. Ms. Payne, would you favor redefining small disadvantaged businesses, SDB's, in the Small Business Act? Would you favor redefining that so that white women would be included? Right now it includes specified minorities, and male/female within those minority categories.

Ms. **Payne**. Yes, sir.

Mr. **Savage**. Would you favor expanding that definition to include white women?

Ms. **Payne**. Yes, sir; and I tell you why. I am a single parent of three children who are all in college. I have had a very difficult time raising them. I have had a very difficult time getting loans. I had a very difficult time getting bonding for my company. I have a lot of problems that I am not covered if I went to apply for a loan.

Mr. **Savage**. Let me ask you, kind of follow this analogy. We have fought long and hard, many of us, because of a problem. The problem was, and I want you to take this analogy, the problem was that minorities, mainly blacks, but also Hispanics, and so forth, Native Americans, male and female, were not growing as large as whites, male and female. They discovered through statistics that the reason was that we were only getting the crumbs off the table. We were getting none of the pie. There was no seat for us minorities at the table.

So, we finally got legislation to say minorities should have a seat also at the table so that it could eat more than just crumbs, or otherwise we would never be equal in size. So we said, OK, but they said, but we will not give you a seat and a slice equal to the proportion of the population, which is almost one fourth of the population when you add the minorities together. But we will give you 10 percent, which is less than half of what was deserved proportionately. But that is much better than crumbs.

So, we set this chair over here at the table, and took 10 percent of the pie, and put it there. We set a chair for blacks, women and men, Hispanics, Native Americans, Alutians, and persons—Americans of Asian ancestry, five chairs at that little 10 percent of the pie, 10-percent slice.

Now, white women and white men set over—though representing some 75 percent of the population, were set with 90 percent of the pie still after the 10-percent set-asides, and so forth. Then white women said, well, we are still not getting a fair share. We are eating out of that 90 percent, but we are not getting a proportionate share of that 90 percent. In other words, I would presume that means that they felt that white males were not treating them fairly. That is who had the 90 percent, females and males white.

So, Elizabeth Dole says, OK, in addition to white women having a right to eat out of that 90 percent of the pie, we are going to also get a cut of 3.2 percent out of that 90 percent that only white women will be able to eat out of, and that means that if they do not either get enough out of 90 percent, out of the 86.8 percent, they then can go over those who are still hungry and have—eat out of that extra 3.2 set-aside. That is all out of the 90 percent.

What the Hammerschmidt amendment did, however, was change that, because the big contractors, whites, white males, are opposed to set-asides because it comes out of theirs—they want 100 percent again. They wanted everyone else to have crumbs, including you maybe.

So, the Hammerschmidt amendment said, no, no; give that 90 percent back to whites, and if the women need a little extra 3.2, take it out of the 10 percent. So, what it took, it took a sixth chair, and pulled up over here at the side of that 10 percent of the pie.

Now, that was not to the advantage of white women. Obviously you can do better. Fighting for a definite share of 90 percent where there are only two chairs then by fighting for a larger share of 10 percent, where there are already five chairs.

So, if you propose redefining the SDB definition of the Small Business Act, that is what you would be doing, and in effect, reducing the 10 percent that is set aside for some 25 percent of the population, which then puts you fighting against the minorities, in effect, in concert with white males who have been denying you a fair share of the 90 percent. However, if you go with the two-goal system, you would find yourself uniting with the minority against the white males who are getting fat at both our expenses. In other words, you would then be getting a share from white males, and we would help you get it, which is the same place from which the 10 percent came because white males are getting more of the pie than is fair for historically evolved circumstances which favored them unfairly.

Thank you, Mr. Chairman.

Mr. HAYES. Thank you.

Just before we conclude the hearing, the Chair would like to make sure, since you presented us, Ms. Payne, with quite a few documents, are you going to follow with your complete written statement?

Ms. **Payne**. Yes, sir.

Mr. **Hayes**. I would like to request unanimous consent that all the documents that you presented to us, plus your complete statement, be made a part of the record, there being no objections.

I would like to also leave the record open for 14 additional days so that additional questions can be submitted for the record of this hearing.

Ms. **Payne**. Yes, sir.

Mr. **Hayes**. Hearing no objection, this procedure will be followed.

As the Chair indicated, we have some conflict in statements with some of the statistics that you have given us from the Illinois Department of Transportation. Subsequent hearings may clear up some of the situation in terms of this conflict.

With that, the committee will stand adjourned, and we appreciate the statement which we will receive from you, and the witnesses.

Ms. **Payne**. Thank you.

Mr. **Hayes**. Thank you very much.

[Whereupon, at 1:28 p.m., the hearing was adjourned, subject to the call of the Chair.]

DISADVANTAGED BUSINESS SET-ASIDES IN TRANSPORTATION CONSTRUCTION PROJECTS

MONDAY, AUGUST 8, 1988

House of Representatives,
Subcommittee on Procurement, Innovation, and
Minority Enterprise Development,
Committee on Small Business,
Chicago, IL.

The subcommittee met, pursuant to notice, at 9:24 a.m., room 2525, Dirksen Federal Building, 219 S. Dearborn Street, Chicago, IL, Hon. Ike Skelton (chairman of the subcommittee) presiding.

Present: Chairman Skelton; Representatives Savage, Hayes, Mfume, and Lancaster.

Chairman **Skelton**. The hearing will come to order.

My name is Skelton, Ike Skelton. I am a Member of Congress from the State of Missouri. Also, I am the chairman of the subcommittee holding this meeting.

We normally have opening statements by myself and by the other members of the subcommittee at this time. However, since we are in the great city of Chicago, and we are guests of this city, we ask at this time your mayor, Mayor Eugene Sawyer, to address us. He does have a busy schedule, and we are delighted that he can be with us.

Mayor Sawyer.

TESTIMONY OF HON. EUGENE SAWYER, MAYOR, CHICAGO, IL

Mr. **Sawyer**. Thank you very much, Mr. Chairman.

Chairman Skelton and members of the committee, ladies and gentlemen.

I am very pleased to welcome you to Chicago. The topic of this morning's hearing is of critical importance to the future of minority enterprise in this city, and because of that, to the future of this city.

All the numbers show the success and positive impact of the set-aside programs when the goal of minority and women business enterprises was distinct between 1982 and 1987. The scope of these set-asides recognized the enormous potential of female- and minority-owned businesses to contribute to this Nation's public works and this Nation's economy.

In 1987, the merging of those programs into a single 10-percent goal for women and minority businesses creates a rapid unfair competition between two significant groups in our society. What is worse, they have been set against each other for a smaller piece of the pie.

Minority contractors in Chicago have grown in size, number, and ability over the last 10 years. Beginning in 1984, city government here, in recognition of their expanding capacity, began to establish goals and programs to fully utilize these abilities.

Those goals and programs have been successful and very good for the life of the entire city. All of our public works programs have significant minority components today. Included in this is the billion dollar expansion program at O'Hare Airport and the lucrative development of real estate adjoining that airport.

Just last week, we announced a program for minority participation at O'Hare Field with a minority company having 41-percent equity and on a construction project of some $67 million, a 51-percent portion of it.

We found these investments to be not only productive for our public projects, but also a reasonable way for a government to promote and encourage economic growth and community stability in our minority communities.

Today, less than 3 percent of the construction work on the Dan Ryan Expressway running through the heart of Chicago's minority communities is going to minority businesses. This is a direct result of the 1987 Surface Transportation and Uniform Relocation Assistance Act, and this collapsed the two-goal system.

Minority contractors in this city can do more than 3 percent of the work on that project. I know that for a fact. They may not own the asphalt companies as the prequalifications require, but they can get the asphalt.

There is one part of the act I do not understand because it seems to me that a person should only have to be required to have access to asphalt rather than own an asphalt company.

Minority-owned contracting firms have done more than one-third work on this city's $200 million residential street resurfacing program over the last 3 years. They have come in ahead of schedule and under budget in each of those years. They can get the asphalt.

We can see no valid reason for the Federal Government to have set up these difficult and greatly unfair situations arising from the way these goals have been framed.

I know there are several plans to remedy this disastrous mistake before Congress now, including one that was suggested by our own Congressman, Gus Savage. Which plan, if finally adopted, whichever one is adopted, I urge you to separate the goals for women-owned businesses from the goals of minority-owned businesses and return the Federal Government to a position of promoting economic growth in all of the communities of this country.

Thank you very much.

Chairman **Skelton**. Mayor, we thank you for being with us today and your hospitality of your good city. I might say my first experience here was with my father in 1940 at the Democratic National Convention, and I was a young boy then. It is a pleasure to be with you.

We appreciate your interest in this subject matter, plus your analysis, and your testimony will be part of the permanent record of which we will study and hopefully make recommendations at a later point.

Mr. SAWYER. Thank you, Mr. Chairman.

Chairman SKELTON. We have no further questions for you at this time. Mayor, we will let you proceed with your daily schedule, which we understand is very busy, and we thank you so much, and have a good day, sir.

Mr. SAWYER. Thank you very much.

Chairman SKELTON. Thank you.

Ladies and gentlemen, let me thank all of you for being with us today here in this historic city of Chicago. This is a very important topic, and I wish to especially thank my colleague, Charles Hayes, and members of his staff who have worked so hard to make our trip a productive one.

I also would like to welcome our distinguished colleague and our good friend, Cardiss Collins. I understand we are positioned at this moment in her congressional district.

Cardiss Collins is going to testify for us shortly, and she serves as the chairwoman of the Subcommittee on Government Activities and Transportation of the Committee on Government Operations in the House of Representatives.

We appreciate the benefit of your recognized expertise in these matters, and you are very welcome, if you so desire, to join our panel after your testimony later this morning.

I have already thanked the mayor. We do appreciate his hospitality and his testimony.

We have a great many witnesses and a limited amount of time. So, let me simply set the stage. This subcommittee has investigative jurisdiction over Government contracting issues involving small businesses. In particular, in the case at hand, we are concerned about the appropriate definition of the "disadvantaged small businesses."

In addition, an amendment was offered to the Small Business Reauthorization bill in committee, which is, by the way, now scheduled to go to conference committee shortly with the Senate. That amendment sought to amend the Small Business Act in such a way as to allocate segments of the 10-percent set-aside required by law in the Surface Transportation and Uniform Relocation Assistance Act of 1987, which also is known as Public Law 100-17.

Specifically, that amendment would require that 65 percent of the set-asides go to minority businesses, leaving nonminority women-owned businesses eligible to compete for 35 percent of the set-asides. That amendment was tabled in committee, but only after a commitment was made to actively work on a solution to the problem. Hence, our being here this morning.

The Dan Ryan Expressway project here in Chicago is a perfect example for us to review. First, it is located in a major metropolitan area with an abundance of businesses of all types, so there can be no claim that a certain class of businesses cannot be found.

Second, I understand that almost 80 percent of the set-asides went to women-owned businesses on the Dan Ryan project. This is, of course, a direct result of the changes made by the 1987 Surface Transportation Act, and the amount of set-asides going to nonminority women-owned businesses will not be changed in any of the proposals that I am aware of.

Now, let me point out to those that are interested in this subject that I do not see the exact percentages offered in that amendment to the bill at that time as the point of this hearing.

Rather, we are committed to working to find some common ground in which we can help to resolve the dispute in a fair manner.

I am instructing my staff to keep other committees who have jurisdiction informed of our hearings and negotiations. I think I speak for all my colleagues in expressing our desire to work to find a solution together.

Without further delay, I thank you for hosting us.

Congressman Hayes, we will now call upon you for your opening remarks.

Mr. Hayes. Mr. Chairman, I would like to thank you for responding favorably to my request to convene this very important and timely hearing, and I, like you, understand the time constraints that we are operating under. So, I will be as brief as humanly possible.

Your commitment to addressing and understanding the issues concerning the minority contractor and set-aside is very crucial to improving small business participation for minorities and for others.

Additionally, I would like to take this time to thank my colleagues, Mr. Mfume, Ms. Collins, Mr. Lancaster, and Mr. Savage when he arrives.

As you know, today this subcommittee is investigating the process in which contracts were awarded on the Dan Ryan Expressway. This matter has been of ongoing concern not only for me but to my constituents and to the small business community.

There are many matters of concern as it relates to the Dan Ryan Freeway Project. For many, issues such as front companies which still exist, discriminatory hiring practices, and the whole issue of disadvantaged business enterprise and women enterprise set-asides.

We must be aware of all these matters, but today we will focus on the issue of DBE and WBE set-asides, and we will further attempt to provide a solution, hopefully in the legislative way, to this problem.

Today, we seek solutions from IDOT, that is the Illinois Department of Transportation. We must know what are the numbers of minority contracts that have been granted? This is bona fide minority contracts on the Dan Ryan; not fronts. How do these numbers translate in terms of the federally required goals, and how does IDOT address the concerns of the new provisions in the Surface Transportation Act?

We also look for solutions from the Attorney General's Office, who, I understand, will be here today. Is IDOT complying with the Federal set-aside requirements? What type of complaints has the Attorney General's Office received, and what are the outcomes of the investigations of these complaints?

Finally, we also look for solutions from the contractors and other small business. What repairs to the system do they feel are necessary?

My purpose in requesting this hearing, Mr. Chairman, is to determine the need for the development of comprehensive legislative solutions to the way contracts are awarded to black minority and women-owned small businesses under the current set-aside program.

It is my hope that this hearing will begin to lay the groundwork for legislation that will alleviate the problem for future transportation projects, particularly all of the State of Illinois, and avert any problems from occurring in other Federal agencies.

Finally, I want to commend the fine witnesses that will appear before us today. I am sure we will all be enlightened by their comments, and I appreciate their taking the time to assist us in understanding the issue before us.

We must know the dollar awards and the exact number of minority contracts that have been issued. Yes; I want to know how many blacks and others have gotten jobs as a result of the commitments that have been made by IDOT based on the percentages that they have released in the press.

We need monitoring services on compliance, and I think this is the type of thing that I hope this hearing will reveal to us. I want to thank you again for traveling here, Mr. Chairman. I know it is tough, and I look forward to today's hearing.

Chairman SKELTON. Thank you so much. We appreciate the hospitality you have given us and the hard work that you and your staff put in to making this come to pass.

Mr. Mfume, the gentleman from Maryland.

Mr. MFUME. Thank you very much, Mr. Chairman.

Let me just preface my remarks by also indicating my thanks to you for your leadership on this very sensitive and important issue.

Of course, as a committee, we try to do a number of things. I do not think any are more important than our efforts today in attempting to identify and to eliminate barriers to access which prevent full minority participation in economic set-asides.

This committee, and I know I speak for all the members of the subcommittee, certainly are appreciative of your efforts in this regard, and your ability, and really your desire to travel around this Nation at the request of many of us to help identify these problems.

I am particularly happy to be in Chicago also, to be here with Charlie Hayes and Cardiss Collins, two of the ablest Members of the House of Representatives. I understand that Congressman Savage will be joining us shortly.

If I might, on a point of personal privilege, Mr. Chairman, just simply reiterate the fact that Charlie Hayes has brought a great deal of leadership to this particular committee in the area of minority enterprise, and that leadership has been well-documented.

He has, as most of us in the House of Representatives know, a very real sensitivity and commitment toward minority business enterprise because he has the ability to be both provocative and evocative.

He is one of those few Members of the House who has both the respect and admiration of labor and business, because he aligns himself with both and he cares very deeply about the problems that interact with both, and, so, it is a pleasure to be here with him, and Congresswoman Cardiss Collins, and with Congressman Savage, when he does arrive.

Mr. Chairman, I have very strong feelings about what we are reviewing today. I know that minority business people face a number of barriers to access, whether they are bonding, or the inability to get prompt payment, or having to deal with front companies.

I hope that these hearings will move us one step closer to being able to identify and to eliminate the barriers that I spoke of, and again I want to commend you for your leadership and sensitivity in this area.

I look forward to what is, I think, a rather ambitious list of witnesses that will be with us today, and I thank you very much for the opportunity.

I yield back the balance of my time.

Chairman **Skelton**. Thank you very much.

It is an ambitious list of witnesses. We will announce at this point that we will not break for lunch. We will continue on with our hearing, which will give us an opportunity of continuity.

Mr. Lancaster, the gentleman from North Carolina.

Mr. **Lancaster**. Thank you, Mr. Chairman, and thank you again, as has been expressed by other members of the committee, for convening this subcommittee hearing here in Chicago, the home of my special friend, Charlie Hayes.

It is with a great deal of pleasure that I come to hear with you, with Congressman Hayes, and with the other members of the subcommittee, the testimony that we will hear today.

I began my congressional career on the Public Works and Transportation Committee, and one of the first controversies I heard about on that committee was the Dan Ryan Freeway and the problems of contracting on that important project.

I am no longer on that committee, but, of course, I am still on this committee, and I am happy to finally be able to get straight from the horse's mouth information about the problems that have been encountered in that project.

I hope that with the testimony we will hear today, we will be able to come up with solutions that will make it possible for contracts which are let in the future to be appropriately let and to recognize the important role that minority contractors play in our overall economic scheme.

I would simply like to echo the eloquent words that my colleague from Maryland has stated about our friend, Charles Hayes, and the kind of leadership he has given, not only on this issue, but to the Congress. He is a special friend and an excellent congressman, and I have enjoyed working on this committee and in Congress with him.

Thank you, Mr. Chairman, for allowing me to participate.

Chairman **Skelton**. Thank you.

I might mention that our distinguished colleague, Gus Savage, a member of this subcommittee and also chairman of the Subcommittee on Economic Development on the Committee on Public Works of the House of Representatives, is due to be with us this morning. We look forward to hearing from him at a later time.

At this time, we are pleased and honored to have the gentlelady who is the host of our presence this morning, Congresswoman Cardiss Collins, to address us.

We welcome you and thank you for being with us, Ms. Collins.

TESTIMONY OF HON. CARDISS COLLINS, CHAIRWOMAN, SUBCOMMITTEE ON GOVERNMENT ACTIVITIES AND TRANSPORTATION, GOVERNMENT OPERATIONS COMMITTEE, U.S. HOUSE OF REPRESENTATIVES

Ms. COLLINS. Thank you very much, Mr. Chairman.

Let me also be one to recognize the fine work of Congressman Charlie Hayes. I remember sitting on the floor of the House of Representatives, and Mr. Hayes mentioned that he was going to do everything possible to have your subcommittee come here because this is such an important issue, and almost on a daily basis, he was mentioning to me the activity and actions that he had taken to make this come about.

I am very happy that you are here; that he has realized all of his efforts in having the subcommittee to come here for this very important issue.

I would also like to associate myself with the remarks of all of you who have mentioned the fine work that Mr. Hayes has done, and also the fine work of this subcommittee. This subcommittee is a very important subcommittee, and it is one that has certainly been mindful of the problems that we have had in the various set-aside programs we have had for minority disadvantaged businesses, et cetera.

Mr. Chairman, I am pleased to appear before you and all of the members of this subcommittee, and I certainly welcome you to the city of Chicago as the mayor has done and to the 7th Congressional District. I hope that you found your stay here a comfortable one, and that you take back with you a sense that Chicago is a very fine city, and the 7th Congressional District certainly is one that holds its arms out and embraces your being here.

Mr. Chairman, I come to you this morning with some sense of frustration, and I will tell you the reason why. This is the fifth congressional hearing that we have had in this room on this subject. The first hearing was back in June 1983 in this very room.

A second hearing was held on September 12 of that same year, right down the hall here in room 2541. Just this past April, we had a hearing on this subject in this room. In August 1983, we had a similar hearing in the District of Columbia and today makes the fifth hearing that we have had, as I have said before, on the subject of minority set-asides.

It seems to me, Mr. Chairman, that for some strange reason, we are not moving fast enough. When we first had the hearings in 1983, as you know, it was shortly after the Surface Transportation Act had been passed, and there was time to see how it was operating.

In those early hearings, we had the Illinois Department of Transportation before us. We pointed out the fact that they were not meeting those goals at that particular time. Suggestions were made of how they could do that.

A congressional report was issued making strong recommendations for both the Congress and the Illinois Department of Transportation, and there were all kinds of promises that monitoring was going to be done and that, in fact, changes were going to be made.

Well, changes have been made. Unfortunately, they are not the kinds of palliative changes that we had hoped we would see at this particular time.

We find that there is an issue here, and that issue is how to eliminate barriers which prevent full minority participation in State highway projects. That is one that requires our focused attention and concerted effort because of the myriad problems experienced by minority contractors.

Mr. Chairman, those problems range from inability to obtain bonding, to difficulty in receiving prompt payment for completed work. There have been other problems, also, which have effectively locked out minorities, such as an arbitrary Illinois State requirement which requires ownership of an asphalt plant on certain projects. That is ludicrous.

Then, there is the issue of fronts, which continues to be a problem.

Chairman SKELTON. Excuse me. Is that in the law, or is that regulation, or are you familiar with the asphalt requirement that has been bandied about?

Ms. COLLINS. It is one that has been used, Mr. Chairman, to keep minorities out of certain kinds of work on the highways of the State of Illinois. As to whether it is a law, whether it is an unwritten law, which I suspect that it might be, I think that is a question that we might want to address when the Illinois Department of Transportation comes before this subcommittee today.

Chairman SKELTON. I understand the Attorney General's Office will testify later.

Mr. HAYES. We have a victim here who is going to testify.

Ms. COLLINS. Wonderful.

Chairman SKELTON. Thank you for raising the issue because that is at the heart of the matter.

Ms. COLLINS. Yes; it does, Mr. Chairman.

Then, as I mentioned before, as the mayor mentioned just a short bit ago, there is the issue of fronts, which continue to be detrimental to any kind of bona fide black business.

This is a problem that I feel has to be eradicated. For over a decade now, it has been the policy of the U.S. Government to promote and assist disadvantaged businesses in order to afford those concerns access to the marketplace and to allow them to grow and to expand.

When the 10-percent set-aside was added to the Surface Transportation Act in 1976, I believed, and the record shows, that it was the intent of Congress to provide greater opportunity for minority contractors on Federal highway projects.

As you know, under the original act, women were not automatically considered disadvantaged but could take advantage of the set-aside program if they demonstrated that they were, in fact, disadvantaged.

Even though women were not included, various State departments of transportation administratively set up their own set-aside above and beyond the 10 percent. Generally, the separate administrative goal for women was around 3 percent. So, you had a situation where at least 3 percent of the contract dollars went to women with, hopefully, 10 percent going to the people defined in the law at that time as being eligible.

Of course, all of that changed last year when women were included in the 10-percent requirement effectively increasing the number of concerns vying for a limited pool of contracts. The one-goal system has caused considerable concern and prompted many of us in Congress to call for return to a two-goal system.

This past April, I called a hearing in the wake of the infamous Dan Ryan controversy. Congressman Hayes was here as both a panel member and as a witness. That project was an example of the inherent danger in a one-goal system and the failure of the Illinois Department of Transportation to award contracts in a fair and equitable way.

You will recall, Charlie, that over 60 percent of the subcontracts on that project went to women-owned businesses. There was only one minority subcontractor and no minority prime contractors. Because of the ground swell of community opposition and a threatened shutdown of the Dan Ryan Highway, the State was forced to provide more subcontract opportunities for minority businesses on that particular project.

Today's hearing is a chance to determine what progress, if any, the State has made in fulfilling that promise. I applaud the subcommittee for holding this hearing in this timely fashion.

Now, beyond the acrimony which surrounded the Dan Ryan incident, there is a larger question of how do we ensure that the DBE program in Illinois is truly effective. At my subcommittee hearing in April, that is the Subcommittee on Government Activities and Transportation, under the Government Operations umbrella, the Illinois State representative, whose name is Anthony Young, testified that the DBE program in the State of Illinois was a "complete and total failure."

He based this on the fact that few minority firms had significantly increased their annual receipts since the inception of the program in 1982. He testified further that the program had failed because IDOT had not implemented it in good faith.

Representative Yvetter Young pointed to the $25 million Martin Luther King Bridge project in East St. Louis where there was virtually no minority participation. Again, Mr. Chairman, this is East St. Louis, IL, where there is a majority black population. The bridge is named after our most prominent former black citizen, one that we all hold with great reverence and esteem, and yet we find that there was not one black subcontractor and no black participation on this particular bridge. That smacks of arrogance to me, Mr. Chairman.

Certainly, the State of Illinois would be more sensitive to the needs of the people and the concerns that they have in this particular location under these demographic circumstances.

The record at that hearing is replete with criticism of IDOT implementation of the DBE program and those criticisms are, I feel, not without foundation.

Last September, Mr. Chairman, I wrote the inspector general of the U.S. Department of Transportation and asked that he investigate IDOT's performance, including the certification procedure, contract performing monitoring, and program goal accomplishment.

The IG's report confirmed what many of us have suspected. In general, the IG determined that IDOT was routinely certifying firms as disadvantaged with little or no effort to determine their true status, just certifying them at will.

Specifically, in a random sample, 60 percent of the firms certified by IDOT as disadvantaged had not provided IDOT with the documentation required by IDOT's own regulations concerning such factors as ethnicity, capital contribution, technical expertise, and so forth.

The likely consequences of such lacking procedures are obvious. It provides a window of opportunity for fraudulent DBE firms to get through and obtain contracts. For example, one contractor had been certified as minority every year since 1983 without IDOT documenting the fact that the contractor was, indeed, a minority. They got lucky on that one.

In another case, the registered owner of a construction company was determined to be unable to read or write. Of course, this goes directly to the owner's ability to operate the firm on a daily basis.

In still another case, the IG's investigation revealed a purported female owner with no documented construction experience or expertise whatsoever, but whose husband just happened to be in the business.

Again, according to the IG, the prevalence of such suspect certifications is attributable to IDOT's having rarely performed, and those words were in quotes, "rarely performed onsite inspections to verify the true status of certified firms, including those whose written submissions were questionable on their face."

I also requested that the inspector general review IDOT's monitoring of the supportive services contract to ensure that funds are being efficiently used to provide meaningful training opportunities for minorities, women, and disadvantaged businesses, and, once again, the IG found IDOT's procedures to be lacking.

For instance, IDOT found that an individual had been placed on the on-the-job training program even though he owned his own firm, was a journeyman, and had substantial experience in the construction industry. The IG also discovered other instances of placement of experienced and nonminority individuals.

As a result, experienced individuals fill training slots intended for inexperienced minorities and for women. These conditions occurred because IDOT did not verify the accuracy of placements and has not established adequate controls to ensure that target individuals are being placed in the program.

In closing, Mr. Chairman, let me tell you that the IG's investigation underscores the fact that the program is not so much a lack of good law and regulation at the State or Federal level, as it is

IDOT's lack of a certification process, which can only invite and encourage the establishment of fronts.

It is clear to me, Mr. Chairman, that the State needs to work more diligently to ensure the integrity of IDOT's certification process for disadvantaged firms, and, in addition, while we in the Congress debate the issue of returning to the two-goal system, there has to be a focused effort to make sure that contracts are doled out in a fair and equitable manner.

As a final step, I have asked the General Accounting Office to monitor selected States in our union and their implementation of the one-goal system. I want to know who is getting contracts and how much, and I want to be able to compare the previous experience with the two-goal method with what is occurring now.

I believe that will allow us to make a realistic assessment of the best way in which to operate the program.

Mr. Chairman, I thank you for offering me the opportunity to join with the subcommittee, and since I must honor a previous commitment that I had already made, I will not be able to accept your offer, but I would more than happy at this time to answer any questions that you may have.

[Ms. Collins' statement may be found in the appendix.]

Chairman SKELTON. Thank you so much for your excellent testimony.

Mr. MFUME. Mr. Chairman, I would like to ask unanimous consent of the committee that the inspector general's full report be made part of the permanent record of this hearing.

Chairman SKELTON. Without objection, so ordered.

[The report may be found in the appendix.]

Chairman SKELTON. Mr. Hayes.

Mr. HAYES. I do not have any questions. I think the gentlelady's testimony is quite comprehensive. She has some of the same questions that I do about the performance of IDOT, and I think this hearing may get us into a position where we begin to uncover some of the shortcomings that exist there. I hope we can rectify them.

I think in response to the questions that the chairman raised, whether or not it is within the law, I think the rules as to how funds are distributed and how the contracts are let are established by IDOT themselves at the State level.

Chairman SKELTON. Thank you.

Mr. Mfume.

Mr. MFUME. Mr. Chairman, I really do not have any questions. I do want to certainly thank the chairwoman again for her testimony, but, even more importantly, for her leadership on that subcommittee and request that we bring into existence a report such as the inspector general's. I think it is convincing and convicting in many respects, certainly as it relates to IDOT, and it certainly ought to give this committee, and perhaps even the full Congress, an idea of where we best ought to concentrate our efforts.

I would like to go back simply to make an observation of the chairman's question about the requirement for asphalt companies, which I find rather absurd.

I do not know, Mr. Chairman, but I would be interested in knowing, and maybe we can pursue it after we get back to Washington, whether this sort of practice, this unwritten policy, is something that is happening in other States and to what extent it is happening.

Chairman **Skelton**. I would like to point out that this was my first experience with such a requirement. If it is, it is not widely understood and known.

Mr. **Mfume**. Thank you, Mr. Chairman.

Chairman **Skelton**. Thank you.

Mr. Lancaster.

Mr. **Lancaster**. Yes, Mr. Chairman; I do have a question.

Ms. Collins, it appears to me that perhaps in the Dan Ryan project and some of the others that the policy of one goal for both women and minority contractors may have been part of the problem, but it appears to me that the real villain in this case is IDOT, the Illinois Department of Transportation.

I would like to know what the Governor, your Governor of the State of Illinois, has done about straightening out that department and whether or not the legislators have held similar hearings to determine whether or not State action might be appropriate to bring that department into line.

Ms. **Collins**. Mr. Lancaster, I cannot speak for the Governor of the State of Illinois. I can tell you, however, that in the heat of this controversy there was a meeting with the Governor of the State of Illinois in his office here in Chicago, and, at that meeting, there were a number of us who were concerned about the issue, and there was also the gentleman who heads up the Illinois Department of Transportation.

We pointed out some of the problems that we had, and I left the meeting feeling very frustrated, in fact, that there were no ready and easy answers at that time.

Even though the Governor then went on television and made a statement that everything had been resolved, the mere fact that when you drive down Dan Ryan, and you do not see minority contractors out there, tells you that the situation has not been resolved.

The Illinois Department of Transportation has, I believe, been extremely recalcitrant in trying to rectify the problems that we have been talking about since 1983. That is 5 years. The program has been in operation for quite awhile.

Now, really, the biggest problem, I believe, is the one-tiered system because when you have a one-tiered system, you have a larger number of people trying to get the small number of contracts that are there.

It appears to me that the Illinois Department of Transportation has been dragging its feet all of this time. Now, one of the hearings that we happened to have had, we had some general contractors in here, and those general contractors seemingly felt very comfortable with dealing with the Illinois Department of Transportation for whatever reason.

I think what we are looking at is an overall picture, an overall picture of a failure of the State of Illinois to recognize what the problems are and its insensitivity to minorities who rightfully, under this Federal legislation, have and should have an opportunity to participate.

You also have an ignoring of demographics where people can be found who can work on various projects. In 1983, one of the problems everybody claimed they had was that they could not find minorities who were in the contracting business. They could not find people who were bondable. They could not find this, and they could not find that.

Those were excuses then. They are excuses now. They were invalid in 1983. They are invalid in 1988. I would suggest and hope that the Illinois Department of Transportation would take this matter very seriously, realizing that for 5 years they have done nothing but impede the progress of minorities on this particular piece of legislation—the Surface Transportation Act—and get on the ball about doing something about it.

I would hope, too, that the Governor would make a statement to you and would answer your question, and perhaps you might even write the Governor, Mr. Chairman, as the subcommittee chairman, to see why it is that we are in the same state in 1988 that we were 5 years ago.

Mr. LANCASTER. Just one comment. As a former State legislator myself, I am surprised that your State legislators have not taken it upon themselves to convene hearings such as this. This is the fifth congressional hearing according to your testimony——

Ms. COLLINS. That is right.

Mr. LANCASTER [continuing]. On this problem. It would appear to me that your State legislators should be equally concerned about this problem.

Ms. COLLINS. May I say——

Mr. LANCASTER. They should hold similar hearings.

Ms. COLLINS. Excuse me. I do not intend to interrupt you, Mr. Lancaster, but I was just anxious to say that I did not want you to leave here with the impression that the State legislature has not shown an interest in this matter.

Mr. Anthony Young, who happens to represent a district within the 7th Congressional District, brought the matter to me, that these things were still going on in the State earlier this year, and that is one of the reasons why we had the April hearing right here in this room about this matter.

State Representative Yvetter Young was one of the witnesses, as was State Representative Anthony Young. We also had the chairwoman of a subcommittee on transportation in the State, and that is Ms. Earlene Collins.

So, I do not want you to leave here with the impression that the State representatives and senators do not have an interest in this matter. They certainly have an interest in this matter.

I think it does not lie in the State legislature as much as in the absolute top—the Governor's office—and with his representatives in the Illinois Department of Transportation.

Mr. LANCASTER. Thank you.

Chairman SKELTON. Thank you so much for your excellent testimony, ably done, as we expect.

I might point out that we will, as a subcommittee, make inquiry of the other 49 States as to comparable situations regarding asphalt or other barriers that they may have, and at a later time, we will make our findings part of the record.

Some of the figures to which you refer are available, but they are available through the Department of Transportation which relied upon the State of Illinois competition and figures that were supplied to them. So, their accuracy is, of course, the basis of your question.

I appreciate your being with us. You have been of invaluable help and thank you again for your hospitality today.

Ms. COLLINS. Thank you, Mr. Chairman.

Chairman SKELTON. We will go to our panels, and I will advise our panel members that we will ask you to offer your prepared testimony, if you have such testimony, for the record. It will be shown in full in the record. Therefore, confine your remarks to 5 minutes, summarizing your full testimony, and that will give us more time to hear all the witnesses and more time to ask questions.

Our first panel, Simone Kapovich, Patricia A. Low, and Eileen Stepanovich. All three are present.

We will ask you to take the seats and tell the young lady who you are so we can get the right name for the right person. You will have to use the microphones close to you or else they will not pick you up. We have two microphones. One is an amplification and the other is for the recorder.

Sherri, put the microphone closer. Each one should have two.

Simone Kapovich, please proceed, and if you have prepared testimony, please offer it to Ms. Stone. She will get it in the record without objection, and then please summarize your testimony within 5 minutes.

Simone Kapovich.

TESTIMONY OF SIMONE KAPOVICH, PRESIDENT, ILLINOIS ASSOCIATION OF WOMEN CONTRACTORS AND ENTREPRENEURS, AND PRESIDENT, S&J CONSTRUCTION CO., SOUTH HOLLAND, IL

Ms. KAPOVICH. Good morning.

Mr. Chairman, members of the subcommittee, I offer my testimony to Ms. Stone.

Chairman SKELTON. Fine; you will have to get closer. Please pull the microphones closer to you.

Ms. KAPOVICH. My name is Simone Kapovich, and I am president of the Illinois Association of Women Contractors and Entrepreneurs.

I am also president of the S&J Construction Co. of South Holland, IL, and am an active member of the Illinois Roadbuilders Association.

My testimony today is on behalf of the Illinois Association of Women Contractors and Entrepreneurs. This association is a statewide organization with approximately 52 members from all parts of the State. Our members include both prime and subcontractors from almost every discipline of construction.

Goals of our association include: (1) building a network to assist women in dealing with the complexities and difficulties facing small businesses; (2) to promote the role of women business enterprises and entrepreneurs; (3) to monitor and participate in legislative and administrative changes which affect women in construction; (4) to encourage participation in and out of the State and Federal agencies; and (5) development of opportunities and providing corridors of opportunities for women.

This testimony is for the purpose outlined in the committee's letter, dated July 29, 1988. The purpose of our involvement here today is to discuss: (1) the impact of existing law on small disadvantaged businesses, both minority and women owned; (2) to review current proposals that would change existing law. Federal mandate set-asides be increased or allocated between presumptively disadvantaged groups; and (3) action that the Federal or State governments should take to enhance the program.

To our knowledge, the only study which has been done concerning demographics on DBE/WBE firms in Illinois was performed by F.H. Uhlig and Associates, a Springfield, IL-based consulting firm. This study was completed March 31, 1986.

Although it is dated, since it is the only study available, we will use it as a source for the following information. I did think my testimony would be too long, so the committee does have that.

Chairman SKELTON. Thank you.

Ms. KAPOVICH. All right. Federal law and proposed changes. The two-goal system. It is proposed that the program required——

Chairman SKELTON. I would really appreciate it if you would put your microphone closer.

Ms. KAPOVICH. Closer? Sorry.

Chairman SKELTON. The other one. Yes; that one. Thank you.

Ms. KAPOVICH. Two-goal system. It is proposed that the program requirements revert back to the two-goal system. That being a separate goal for DBE firms and WBE firms. The Illinois Association of Women Contractors and Entrepreneurs conducted a survey regarding this particular issue.

The survey includes not only our association members but WBE's and the Illinois Department of Transportation and the city of Chicago's minority list. The result of the survey indicated that of those responding, 76.1 percent favored the one-goal system and, therefore, opposed the two-goal system.

It is our association's opinion that the current system fosters competition for construction work which provides the best of worlds at the best price for the agencies involved. In order to be low bidder, the firm has to present the best package meeting the required specifications.

Under this system, governmental entities and taxpayers can get the most for their money. Women contractors have been aggressive and highly competitive in the construction industry.

As a result, they have been successful in getting contracts and have increased their market share in the industry. We do not believe that the reward for hard work be to lower their goals. In further support of this position, the following quote is from a position paper, dated May 1987, from the Women Construction Owners and Executives, USA, which has approximately a 180 members nationwide.

WBE construction procurement. Initially, our position advocated separate WBE and MBE goals to enhance equal access to construction procurement dollars. However, since the Surface Transportation and Uniform Relocation Assistance Act of 1987 has been enacted with the combined goal for WBE's and MBE's, we seek to have the combined goals raised.

We would submit that a State of Illinois association and a national association support a one-goal system and would, therefore, recommend to this committee that the present system not be changed.

I would also like to add that the Federal Highway Administration reports that no appreciable change has occurred since adoption of this provision. In fact, the Federal Highway Administration reports that even in the quarter within the Dan Ryan project as reported, no appreciable shift in the national statistics among minority business enterprises and women business enterprises had occurred.

Needed improvements to the existing program—bonding and finance. Legitimate DBE's and WBE's find it very difficult to obtain bonding and sufficient working capital. This is especially true for women-owned businesses. In many cases, banks or lending institutions require that their spouses cosign on loans or notes. If this is done, the DBE runs the very risk of being decertified, thus being in a catch-22 situation.

Since the purpose of the program was and, we believe, still is to foster minority participation in the construction field, the system, in fact, discourages or makes it impossible for them to participate. Possible solutions to this problem may include: (1) the State or Federal Government could guarantee payments and performance bonds; (2) establish a program of advanced payments; (3) create a business development program of loans or lines of credit at a low-interest basis.

Failure of a firm to perform. We would support program criteria for the termination of any certified firm who fails to perform their portion of a contract.

Goals based on availability of certified firms. The association believes that goals should be based on availability of certified firms as well as the types of work included in the project.

Elimination of bid shopping. Bid shopping by prime contractors often results in minority firms accepting work at a less than break-even price. The Federal, State, and local governments have already determined that the best manner in which to award construction contracts is through the sealed bid process.

It, therefore, stands to reason that the same principles should be extended to subcontracts. This would foster legitimate competition and should result in a fair price for the work to be completed. We, therefore, believe that the Federal and State governments establish regulations to eliminate bid shopping.

Guidelines on industry practices. Guidelines need to be established on accepted industry practices. Some of the guidelines needed include but are not limited to: (1) carrying of subcontractor payrolls by the prime contractor; (2) subcontractors to remain employees of another firm while establishing their own business; (3) equipment leasing; (4) share of office space and facilities; (5) spouses or children employed by the firm.

Problems with these issues outlined above are often encountered in the certification process. There appears to be a double standard in the construction industry. Prime contractors are allowed to hire whom they wish, have offices where they wish, help carry a payroll for a nonminority sub, et cetera.

However, if these practices are done with a minority firm, it is automatically assumed that the firm is a sham or front. We believe that if guidelines were established based on common industry practice, that many of these double standards would be eliminated.

We would like to thank the subcommittee for the opportunity to share our views on this program with you. Our recommendations are designed to help strengthen this program, and we would respectfully request that the committee consider our views in their future deliberations.

I would be pleased to answer any questions from the members.

[Ms. Kapovich's statement, with attachments, may be found in the appendix.]

Chairman SKELTON. Thank you so much.

Patricia Low.

TESTIMONY OF PATRICIA A. LOW, PRESIDENT, PAL INDUSTRIES, INC.

Ms. LOW. Mr. Chairman, can you hear me?

Chairman SKELTON. That one is for the recorders. The other one is for us.

Ms. LOW. Can you hear me?

Chairman SKELTON. Yes; pull it up a little bit. Good, thank you.

Ms. LOW. Mr. Chairman and members of the committee, thank you very much for giving me the opportunity to testify at this very important meeting.

Chairman SKELTON. Do you have prepared testimony?

Ms. LOW. Yes.

Chairman SKELTON. It will be made part of the record, of course, without objection. So, please summarize in 5 minutes. Thank you.

Ms. LOW. At this time, I would like to add to my testimony.

My name is Patricia A. Low, and I am president of PAL Industries, Inc. I am a small specialty general contractor who is prequalified with the Illinois Department of Transportation, and I am also a small subcontractor who is certified within the DBE/WBE program of the Illinois Department of Transportation.

I have been active in the construction industry for over 14 years and 4 years ago, I started PAL Industries, Inc.

We specialize in all types of highway signing, bridge rail, beam repair and replacement, and guard rail. Last year, PAL Industries, Inc., did work for approximately 47 prime contractors in the State of Illinois and 45 percent of our dollar volume was directly attributable to bidding as a prime contractor.

Objectively, I would like to state that I believe sincerely in the efforts of the U.S. Government to bring women and minorities into the construction industry. The demographics brought out in the Department of Labor's Work Force Project 2000 shows the real need to train and educate minorities and women for the future good of our industry.

Furthermore, morally, I believe that there has been discrimination against minorities and women in this industry, and I believe it is right and just to take action that stops discrimination in all forms.

I feel, as a female contractor, there is no question in my mind that I have been discriminated against, both covertly and overtly. You have seen or will see all kinds of statistics and information from other women in this industry, and I concur wholeheartedly with their assessment of the difficulties of being a woman contractor.

There is an area that I would like to address, however, because I believe that it is central to the issue at hand. The people in the mainstream of the construction industry have learned that in order to progress and to do the best possible job, the free enterprise system needs the competitive bidding system.

It is this system that keeps taxpayer costs down. It is what generates quality performance, and it is what brings about new and innovative ideas. I sincerely believe that the best interests of the DBE/WBE business and the construction industry in general would be best served in the long range by the use of the one-goal system.

I believe that competition does not destroy potential viable DBE and WBE contractors, and that competition is the one action that brings about the performance that is needed to be competitive in the construction arena.

Construction is a very difficult business. Of all types of businesses in the United States, only restaurants have a higher rate of failure. In fact, the current statistic is that 80 percent of all construction businesses started will fail.

The highway construction industry's profits are in most cases less than 2 percent. It is extremely difficult for white American males to survive in this business. How much more difficult is it for DBE and WBE companies?

As I read the program from the Federal level, it was set up as a goal-oriented program to help minority firms enter into the mainstream of the American construction industry. The goal program was designed as a help program for those who wish to help themselves.

An example of this is item 14 in the Introductory Question and Answer Section of the Blue Book of the Illinois Department of Transportation Certification Process.

The question is as follows: "Does a firm's DBE certification guarantee that it will be awarded contracts?" The answer is no. The DBE program is designed to assist the development of disadvantaged small businesses and to guarantee them fair opportunities to compete for a recipient's business. It does not guarantee work to a firm.

To be successful, a DBE must first become certified by the recipient it intends to serve and then sell it itself, its personnel and its services, as any good business should. Each recipient has a strong commitment to meet the DBE goals, but the competition in the marketplace remains fundamental.

No recipient is expected to ignore the principle of awarding contracts on the basis of the lowest competitive and responsive bid.

To me, a large part of the confusion surrounding the program is brought about by the conflict of being disadvantaged on the one side and the expectation on the other side that each and every

DBE and WBE be independent, self-supporting, knowledgeable, and adequately funded.

The two ideas simply are not compatible. How can the disadvantaged and women-owned businesses be expected to know and be all of those things over such a period of time? One has to grow into the leadership and responsibilities of owning a business.

In conclusion, when discussing highway needs, millions and billions of dollars are bandied around. It should be noted that highway contractors are not large businesses. Figures from a local trade organization suggest that the average annual dollar volume of a prime contractor in Illinois is less than $4 million a year.

They are historically small family-owned businesses. Most of these contractors will never attain $14 million a year in construction sales. Many of these firms, in fact, prefer to stay small where they can keep close control on all of their costs and, therefore, maintain a higher percentage of profit.

Another point is that on the average, only about 10 percent of a contractor's work is available to be sublet. The rest of the work will be done by the prime contractor himself. There simply is not the cornucopia that people believe there is in the construction business, and the only chance for the long-term survival for the DBE and WBE contractors is to be exposed and tested in this very competitive market.

Therefore, it is essential for the one-goal system to remain in effect.

Thank you for the opportunity to testify.

[Ms. Low's statement may be found in the appendix.]

Chairman SKELTON. Thank you so much.

You all hit the 5 minutes pretty much on the nose. I appreciate that.

Eileen Stepanovich, I have a problem with your name. It is listed as Stepanvich. In your testimony it is Stepanovich. Which is correct?

Ms. STEPANOVICH. Stepanovich.

Chairman SKELTON. With the "O".

Ms. STEPANOVICH. It is spelled with an A. It is pronounced with an O.

Chairman SKELTON. OK. The recorder will make the correction. You may proceed, Ms. Stepanovich.

TESTIMONY OF EILEEN STEPANOVICH, OWNER, STEPPO SUPPLY CO., AND PRESIDENT, STEPPO CONSTRUCTION CO., INC.

Ms. STEPANOVICH. Congressman Skelton and subcommittee members, my name is Eileen Stepanovich. I am sole owner of Steppo Supply Co. and president of Steppo Construction Co., Inc.

I have been involved in the road construction program for the past 23 years. The first 15 of those years, I worked for Young Metal Products, a steel fabricator of drainage products and large-scale structures.

During this time, I was responsible for the estimating, purchasing, and outside sales force, and all phases of office procedures. The last 5 years of those 15, I spent in outside sales where I came to know road and underground contractors in the district 1 area of Illinois.

Toward the end of that period, I was top salesman of 16 sales people for 3 consecutive years. In January 1981, after my husband died, I formed Steppo Supply Co. to increase my product line and my personal income as the burden of supporting 10-year old twins and our household became entirely mine.

The products I added were allied to those in the industry which served to enhance my service capabilities, and to establish customers, and to introduce myself to prospective accounts.

In 1982, Young Metal Products ceased operations with the death of Mr. John Young, its president and owner. At this time, I negotiated to represent similar steel fabricators in sales which constituted the majority of my annual income as Steppo Supply Co.

Beginning in late 1983, I worked for 5 months with Case International on supplying the liners for the United Terminal Building at O'Hare Airport. The minority goals on this project were 25-percent MBE, 5-percent WBE.

Caissons Contractors have difficulty in subcontracting portions of their work. Their item consists of drilling a hole, setting resteel, and filling it with concrete. Case International was restricted to crediting my participation because Steppo Supply Co. was a manufacturer's representative. Therefore, only 20 percent of the money spent on caissons could be credited toward that percentage goal.

As a result, Steppo Supply Co., which had sold to Case for many years, lost them as a caisson customer. Consequently, I was faced with a serious financial problem, having lost a quarter million dollar sale. In an effort to keep my cash-flow positive, I appealed to Case to allow me to bid on their slurry wall portion.

My introduction into construction resulted when I was awarded this contract. The work involved purchasing an office trailer, leasing tanks to mix the slurry, and hiring a crew of five people to perform the necessary labor.

A quality control person was also needed on site during the process. This project lasted approximately 5 months. Slurry operations are scarce by nature and, so, to expand the scope of my operation, I began investigating other related work such as flat work concrete.

This type of work required minimum investment in equipment. I was successful in negotiating several time and material contracts which allowed me to establish costs for future hard dollar bidding. The acquisition of a computer and the construction software has further proved to be a great asset.

To me, there is no doubt that my success today is a direct result of the minority enterprise development program. My company's financial growth and service expansion developed on the competitive level and necessitated me to increase my level of capabilities through continued education and the acquisition of equipment and qualified employees.

Steppo Supply Co. is signatory with six trade unions and maintains certification with six Government agencies. Last year, Steppo grossed in excess of $5 million in annual sales, of which over $1 million were in the private sector.

Our work force at one point exceeded 55 people. I believe the one-goal system promotes a healthy competition among minority contractors, thereby raising the level of qualified bidders to a point that those who are not qualified are discouraged.

Unqualified contractors inevitably will hurt the program and will be costly to all parties involved, especially the Government. Thank you.

Chairman SKELTON. Thank you so much.

Mr. Hayes.

Mr. HAYES. I understood, Ms. Kapovich, you clearly stated that you favored the one-goal system. Is that right?

Ms. KAPOVICH. Yes, sir.

Mr. HAYES. You are representing your entire organization, right?

Ms. KAPOVICH. Association, yes, sir.

Mr. HAYES. Association. Could you just briefly indicate what are the reasons that your organization takes its position?

Ms. KAPOVICH. Well, there was a survey taken from the organization, and I have it documented in here.

Mr. HAYES. You said 76 percent agreed that the one-goal system was what they——

Ms. KAPOVICH. Yes; what they wanted.

Mr. HAYES. Could I ask you to give me some indication as to from whom, and what was the area in which you took this kind of survey?

Ms. KAPOVICH. It was from the State of Illinois, complete area. We took the survey. In fact, our past president took the survey, and I believe she submitted it to Congresswoman Cardiss Collins, and was from the list from the Illinois Department of Transportation, women's minority list, as well as the city of Chicago's women's minority list, and it was from our Illinois Association of Women Contractors numbers.

Mr. HAYES. Did I understand you to say, Ms. Low, you agreed, too, with the one-goal system?

Ms. LOW. Yes; I do.

Mr. HAYES. You are a contractor, right?

Ms. LOW. Pardon?

Mr. HAYES. You are a contractor?

Ms. LOW. Yes; I am.

Mr. HAYES. How many black employees do you have?

Ms. LOW. Full-time in the office?

Mr. HAYES. How many employees do you have, period?

Ms. LOW. Full-time in the office, eight.

Mr. HAYES. Eight. How many blacks?

Ms. LOW. None.

Mr. HAYES. Ms. Stepanovich, you are a contractor, too?

Ms. STEPANOVICH. Subcontractor.

Mr. HAYES. Subcontractor. How many employees do you have?

Ms. STEPANOVICH. Overall, three in the office. One is Hispanic, one is black.

Mr. HAYES. You do not actually do any work yourself, you bid?

Ms STEPANOVICH. I do all my work.

Mr. HAYES. Pardon?

Ms. STEPANOVICH. I do all my work.

Mr. HAYES. I mean, your firm, do you actually, for example, go out and do the highway construction work?

Ms. STEPANOVICH. Yes; we do. We do flat work concrete work, structures, steel structures, drainage.

Mr. HAYES. How many employees do you have involved in that?

Ms. STEPANOVICH. The work force last year averaged 55.

Mr. HAYES. Fifty-five.

Ms. STEPANOVICH. Minority participation last year was 39 percent.

Mr. HAYES. Thirty-nine percent. All right, Mr. Chairman.

Chairman SKELTON. Thank you.

Mr. Mfume.

Mr. MFUME. Ms. Kapovich, Ms. Low, and Ms. Stepanovich, let me thank all of you for being with us this morning.

Being in business is not an easy job, whether you are female, black, Hispanic, or Asian, in this Nation. So, I want to commend you on your efforts, and I would like to pick up on the questioning of my colleague, Mr. Hayes, regarding the survey that you spoke of, the 76-percent response that you got as it relates to keeping this a one-goal system.

I listened to and went through your testimony, and I went back to read some of it to make sure that I understood as best I could the reasons that were given and the reasons that you used in your summaries.

I recognize that in this Nation there probably are 30 to 35 million persons of African ancestry, and probably well over a 120 million women, and if we have one pool, which is 10 percent, and if everyone is allowed to compete, everyone meaning women, blacks, and other minorities, then after awhile, it is clear to me at least that groups that have gone into that, that is, black contractors who were disadvantaged to begin with, are a little more disadvantaged because of an extremely larger group of individuals with whom they have to compete, in this case women.

One of the things that really disturbed me about the set-asides and the way this Nation goes about doing them is that we put aside a little bit of money, and we say everybody go after that. So, we pit women against blacks, Hispanics against Asians, and the small amount of money or contracts that they are going after really is negligible almost.

I mean, we are talking about a set-aside. I think set-asides ought to be up to 25 percent and then have all of those groups go at them.

So, my real concern is that not desiring to move toward a two-goal system, maintaining a one-goal system, just creates a situation at least for black contractors that they increasingly year after year, as more women move into the business, find themselves even more disadvantaged competing for that small amount of the pie with many more groups.

I do not think it serves the black people well. I do not think it serves women well. I do not think it serves Hispanics or Asians well, and I have a very real problem with it.

The other real problem, as many members of this committee will say, it is difficult, at least in the Congress of the United States, to find the sort of consensus we need to pump up the existing pool well beyond 10 percent.

Certainly, if we are talking about 25 percent, it is almost impossible.

I would like to at least hear from all of you as to how you think we may go about resolving this dilemma, and it is really becoming a dilemma. I do not think we would be here today at the call of the chairman if we did not recognize that there is a real dilemma and a real problem, and all of us are here because we are concerned about it.

God knows, the chairman of this committee has been going around this Nation looking at instances that have developed as a result of Federal law, in this case set-asides, that I think do not work well for women, or blacks, or anyone else, and, so, I would be interested to hear your response to my remarks and ideas that you may have that would lead us toward some sort of resolution of this problem as we know it.

Ms. Low. I would like to take this opportunity to read something from the Labor Department. This is a booklet called "Work Force 2000." I do not know if you are familiar with it or not, but I think it does pertain to this.

> The Labor Department's demographic projection entitled Work Force 2000 could better be named Crisis 2000. The job demand will be enormous. The demand for people with skills will be huge. We need to get into place the systems and the proccesses to provide these skills. Future supply of skilled workers available to the construction industry will be inadequate unless specific steps are taken to correct this shortfall now and in the next 10 years. Recruitment, training and employment opportunities need to be developed.

I think the only answer is education, and I think it has to start before anyone goes into the construction business.

Mr. Mfume. Ms. Kapovich? Any thoughts at all about what is becoming a very real dilemma?

Ms. Kapovich. Well, I think it is a hard situation, but I really believe that active competition, which is the backbone of our free enterprise system is what this country was founded upon. I really believe that we all have to be competitive, and I know on the Dan Ryan project, which I am part of, I have several minority contractors call me for work, and I told them that I would be glad to give them a portion of my work if they wanted it, and the questions I asked the four contractors that called me, which I think this is part of the problem, was (1) did you obtain the plans and specifications; (2) did you bid the job; and (3) can you bid the portion of work that you would like me to give up to submit to you.

All three of the contractors answered no to those three questions.

I do think part of the problem with minority contractors is they have to realize, and especially the Dan Ryan project, there were 14 volumes that you had to go through, there was a lot of reading, and a lot of months of reading and planning to figure out your bids on that project.

I think they need to know that in order to be part of it, to be part of the project and get awarded the jobs, they have to go out and bid them. I think I agree with Pat's part, education.

There has to be education, and they have to realize, all of us, that it is competition that we have to go against.

Mr. Mfume. Well, let me just summarize because my time is expiring. I hear this word competition over and over again, and I guess I would not be so adverse to the idea if, in fact, it were a reality.

If many of these white male prime contractors were subbing out to women, and subbing out to minorities, and trying to bring people in, trying to increase the amount of available people to do the job, I would not have a real problem with what we have in the 10-percent set-asides.

But I do not see that. I see it as sort of a closed society, and that closed society says this is mine and that 10 percent is yours, and you go fight over that, and we will talk about competition, and, so, again, I would like to end as I began.

I think that works to the disadvantage of women, and to the disadvantage of black contractors, and Hispanic contractors, and I believe that until we are able perhaps to resolve in the minds of some of these larger primes that make up and are getting this 90 percent of the business, that this business did not fall out of the heavens, it comes from Federal tax dollars, that all people pay into, and until they recognize that it is not private money somewhere, I think they need to recognize also that there ought to be a larger public commitment to bringing people in and to trying to do what you can as primes and as others who are making up this 90 percent to at least help alleviate this sort of problem so that we do not pit one group against the other.

Mr. Chairman, I thank you and I yield back the balance of my time.

Chairman SKELTON. Thank you.

Mr. Lancaster.

Mr. LANCASTER. Ms. Kapovich, I would like for you to clarify something that you said in your testimony. I thought I heard you say that the statistics showed that there has not been an appreciable change in the ratio between women contractors and racial minority contractors under the one-goal concept as opposed to the two-goal concept.

Did you say that?

Ms. KAPOVICH. Yes; I did.

Mr. LANCASTER. Are those statistics a part of your testimony, other than that statement?

Ms. KAPOVICH. Pardon?

Mr. LANCASTER. Do you have anything in your written testimony other than that statement——

Ms. KAPOVICH. No; I do not.

Mr. LANCASTER. And what was——

Ms. KAPOVICH. I do have, if I am not—I do have here with me that for the first quarter of 1988, the DBE's received 12.4 percent of the work and the WBE's received 3.2 percent of the work, which is not, in fact, from 1987, the DBE program, 11.7 percent of work and 3.3 percent went to women minority.

Mr. LANCASTER. And the source of those statistics?

Ms. KAPOVICH. Pardon?

Mr. LANCASTER. What is the source of those statistics?

Ms. KAPOVICH. These were researched for the association. I do not know where the source came from. I believe it was from the Federal Highway.

Mr. LANCASTER. Could you answer that, Ms. Low?

Ms. Low. Yes; it did come from the Federal Highway Administration, and I can give you the exact figures.

1986, DBE's, 12.3 percent, WBE's, 3 percent. 1987, DBE's, 11.7 percent. So, they dropped slightly. WBE's, 3.3 percent. So, they went up in 1987. First quarter of 1988, the DBE's, 12.4 percent. They went up from the preceding year. WBE's, 3.2 percent. They actually dropped.

Mr. LANCASTER. I wonder, since each of you is actively involved in the construction industry, if you might not cite particular examples where you as women contractors may have experienced discrimination in your work as contractors. Of course, be brief. If you have long lists, you might want to submit those later, but it would be helpful if you might just give a brief personal account.

Ms. STEPANOVICH. My testimony was a personal account. I was here to give a personal account as Steppo Supply Co. My first experience after working and selling products for all those years was at O'Hare Field, where because of the small WBE portion, which was already satisfied by S&J contractors, and that is where I met Simone; she did the steel.

The contractor doing the minority portion, which was harder to fulfill because of the scope of caisson work, bought the caisson liners. I was shut out completely as a supplier in a business that I had been doing for 23 years. But, in retrospect, I am very pleased. The program did well for me because it forced me into expanding the scope of my operation, and I have grown.

Mr. LANCASTER. Ms. Kapovich.

Ms. KAPOVICH. Well, I was subcontractor for the caissons that I was talking about at the United Airlines Terminal, and I was actually making the cages with tie wire and rebar.

I had a problem out there that because I was only doing the erection part of it. I was being supplied the tie wire and the rebar, which the foreman on the job decided they were not going to give to my men because it was a woman-owned company. Women did not know what they were doing.

I called Mr. Linvel Chung at Reliable and told him I had a problem out there that they would not give my men the tie wire for the rebar to make the cages. I told him I was going to go out to O'Hare Airport and see what the problem is and rectify it. He told me he would give me help, send me a man to go with me, and I told him I did not need anyone to go with me. I was qualified to handle my own problems.

I drove out to O'Hare Airport, was brought on the field through surface security, and handled my own problem out there. They refused to give my men, because I was a woman-owned company, the tie wire to tie and make the rebar, make the cages.

When I told them that, yes, indeed; I knew that the cages were being made, and they needed number 9 tie wire and exactly what they were doing, I resolved the problem, but these are things that women face. They really feel that the women do not know their scope of work, which I think is discriminating.

Mr. LANCASTER. Ms. Low.

Ms. Low. I have a couple of things here. How I have been discriminated against overtly. Before the 10-percent goal went into effect last year, I was low bidder on a sign maintenance contract amounting to $50,000. I was asked to give away 25 percent or $12,500 to a minority subcontractor. I had nothing on this contract to farm out. So, I asked for a waiver. I was told I must find a subcontractor and give away $12,500 or I would not be awarded the contract.

They strongly suggested that I buy $12,500 worth of paint. I told them I probably would use no more than $8 worth of paint on the entire contract. They told me to buy and store the paint. This mode of thinking went on for 7 months and many, many phone calls.

Finally, they awarded me the contract with the waiver.

Mr. LANCASTER. Who are they, Ms. Low? IDOT or——

Ms. LOW. No; it was not. City of Chicago.

Mr. LANCASTER. City?

Ms. LOW. City of Chicago.

I have another one, if you——

Mr. LANCASTER. Sure.

Ms. LOW. OK. How I have been discriminated against covertly. Every year, I apply for recertification from several agencies. All have been reasonable. Most take a matter of weeks and one a couple of months.

One agency in particular, however, takes a ridiculous amount of time. I have had my application for recertification in their offices for 5 months now. Each time I call asking where it is, I am told that it will be going before the board the next week, and I will be hearing from them soon.

These phone calls on my part have been going on for several months. Last time I called, they informed me that it was lost. Every year, I have to go through the same harassment for long periods of time, and I understand that other white women are having the same problem. This agency, I might add, is not the Department of Transportation.

Mr. LANCASTER. What is the agency, Ms. Low?

Ms. LOW. City of Chicago.

Mr. LANCASTER. I have no further questions, Mr. Chairman.

Chairman SKELTON. Thank you so much.

I might say Mr. Lancaster asked my questions. So, I will not repeat them.

We do appreciate your being with us and your excellent testimony.

Mr. HAYES. Could I just ask one question? I would like to ask Ms. Kapovich?

Ms. KAPOVICH. Yes, sir.

Mr. HAYES. How many black women firms are part of your association?

Ms. KAPOVICH. Women? I have no black women. I was not able to obtain any. My main work out on the Dan Ryan is iron work.

Mr. LANCASTER. Your association.

Mr. HAYES. Your association.

Ms. KAPOVICH. Oh, I am sorry. I thought you said my work. I am sorry.

Mr. HAYES. Your association.

Ms. KAPOVICH. How many black women?

Mr. HAYES. How many firms that are a part of your association are headed by black women?

Ms. **Kapovich**. I believe we only have one in the firm.

Chairman **Skelton**. May I follow that up?

Ms. **Kapovich**. I did submit that. Our survey was taken from the complete City of Chicago's WBE List, IDOT's WBE List, and our association's list, which included the black women.

Chairman **Skelton**. May I also ask to follow that up? Do you have any firms headed by either Hispanics, Asians, or other minorities, other than blacks?

Ms. **Kapovich**. Pardon?

Chairman **Skelton**. Any members of your association minority women other than blacks?

Ms. **Kapovich**. No. No, sir.

Chairman **Skelton**. OK. Thank you.

Well, thank you very much. We do appreciate your being with us.

We will now go to panel 2.

We call on Sharron Matthews, Reverend Ed Riddick, Linvel Chung, Peter Martinez, Glen Harston, and Cleve Chapman.

Please step forward.

I will do it again. Sharron Matthews, Reverend Ed Riddick, Linvel Chung, Peter Martinez, Glen Harston, Cleve Chapman. We are short two. Who is not here?

Ms. **Matthews**. Reverend Riddick and Mr. Chung are not here.

Chairman **Skelton**. Mr. Chung is not here.

Ms. **Matthews**. Mr. Chung, Reverend Riddick, and Peter Martinez are not here yet.

Chairman **Skelton**. We have one that does not have a name down here.

Ms. **Matthews**. Yes; Mr. Taylor Cotton. Mr. Taylor Cotton is a coworker of mine. He is a technical expert.

Chairman **Skelton**. I see his name.

Ms. **Matthews**. He is a coordinator from the Affirmative Action Division for the Chicago Urban League.

Chairman **Skelton**. He is with you, Ms. Matthews, is that correct?

Ms. **Matthews**. Yes.

Chairman **Skelton**. Would you all like to sit next to each other? That may be more helpful to you. Mr. Cotton, why do you not trade places there? That might be more convenient for Ms. Matthews.

We thank you for being with us. Ms. Matthews, we will begin with you.

TESTIMONY OF SHARRON MATTHEWS, DIRECTOR, ADVOCACY DEPARTMENT, CHICAGO URBAN LEAGUE

Ms. **Matthews**. All right. Thank you, Mr. Chairman.

Distinguished members of the Small Business Subcommittee on Procurement,——

Chairman **Skelton**. Excuse me. The same rule applies. Offer your testimony in full as it is prepared, if you have prepared testimony, and then confine your remarks to 5 minutes. That would be very helpful to us. Thank you.

Ms. **Matthews**. All right. Distinguished members of the Small Business Subcommittee on Procurement, Innovation, and Minority

Enterprise Development, I am Sharron Matthews, director of the Chicago Urban League's Advocacy Department.

On behalf of president James W. Compton and the Chicago Urban League's board of directors, I express deep appreciation and support for the serious attention directed by this hearing toward equitable participation by black and other minority business enterprises in the Department of Transportation [DOT] programs.

The Chicago Urban League founded in 1916 is the oldest and largest full-time race relations agency. The League's mission is to eliminate racial discrimination and to work for the achievement of equal opportunity and parity for blacks and other minorities in every phase of American life.

As the city of Chicago's premiere race relations organization, all of our work has been directed toward achieving equal opportunities and improving the equality of life for all Chicagoans. Our strategies have varied with the demands of time, but include research, advocacy, and direct services in the areas of education, employment and economic development, social services, housing, and Government relations.

Our task has never been easy, and at times it appears to have set our goal of equality, of opportunity has become more distant, that our advances of the past have been reversed, that national commitments and resources of compassion, good will, and fairness are evaporating.

As you probably are aware, the Chicago Urban League has been actively involved in the development of affirmative action programs and minority businesses. The League has long understood that the development of minority businesses is a vital part of any strategy to foster economic development and augment employment opportunities. To this end, our Affirmative Action Division has worked to promote minority business participation in a number of major construction projections, while also promoting the hiring of minority workers by all contractors involved. This effort has entailed design of aggressive affirmative action plans, monitoring implementation of the plans, and providing technical assistance to both contractors and minority vendors. Major contracts have included the $350 million United Airlines "Terminal for Tomorrow," the $600 million AT&T corporate center, and other major construction projects. The League's involvement with affirmative action in relation to the Illinois Department of Transportation and Federal Highway Programs began in 1982, shortly after the passage of the Surface Transportation Assistance Act, specifically as it related to section 105(f). We found that IDOT was not meeting the Federal requirements that a minimum of 10 percent of funds for highway construction projects should be spent with minority contractors and small businesses.

At that time, a civil suit, *Black Contractors United* v. *Illinois Department of Transportation,* was filed in U.S. District Court against IDOT, and a subsequent formal complaint was filed with Secretary Elizabeth Dole of the U.S. Department of Transportation. The essence of the charges against IDOT were as follows:

IDOT had failed to ensure that 10 percent of the funds appropriated under the Surface Transportation Act of 1982 and awarded by IDOT had been expended with disadvantaged business enterprises

[DBE's]. Only 6.1 percent of total IDOT awards were made to DBE's; second, IDOT had failed to provide an effective monitoring system of contract awards to ensure accurate information on DBE participation; third, IDOT failed to provide an effective system for ensuring full and equal participation by legitimate, capable DBE's; fourth, deficiencies in IDOT's DBE program stemmed directly from a systematic exclusion of representatives of the minority business community in the planning, implementation, and monitoring of this program. These complaints were lodged in 1984. The suit resulted in a temporary restraining order delaying the bid process for the Eisenhower Expressway reconstruction. The suit was later dismissed due to the failure to include the U.S. Department of Transportation as a defendant in the case. Some of the issues in the suit were subsequently addressed by IDOT and the Illinois General Assembly, but there continues to be major problems locally and nationally regarding access and full participation by minorities in DOT programs.

Ironically, on the national level, the current major barrier is an amendment to a law which was originally drafted to help remove such barriers. The effect of the Surface Transportation Uniform Relocation Assistance Act, STURAA, of 1987, section 106(c), in particular, has been to substantially reduce minority business enterprise [MBE] participation in public works projects.

The changes made by Congress in DOT's Disadvantaged Business Enterprise Program have resulted in a reduced level of contracts awarded to MBE's and a disproportionate number of contracts awarded to recently converted white women business enterprises. Nowhere is this crisis more evident than on the Dan Ryan Expressway Rehabilitation project—one of the largest public works projects in the city of Chicago.

The last 16 months have been particularly difficult for us, as we, in collaboration and coordination with the following organizations, have been confronting the damage done on the Dan Ryan Expressway by STURAA: Operation PUSH; the Woodlawn Organization; Lawndale Peoples Planning & Action Conference; Midwest Community Council; Black Contractors United; Hispanic-American Construction Industry Association.

Chairman SKELTON. Excuse me. Damage done by whom?

Ms. MATTHEWS. STURAA. The act that was referred to.

Chairman SKELTON. OK.

Ms. MATTHEWS. Yes; OK. Midwest Contractors for Progress, Chicago Women in Trades, Coalition for United Community Action, Latin American Task Force, West Side Small Business Development Corp., Spanish Coalition for Jobs, Coalition for United Community Labor Force, and the Chicago Professional Development Corporation. All of these organizations are members of the Dan Ryan Is Vital to Everyone in Chicago Coalition [DRIVE], which was organized to correct these injustices found on the Dan Ryan reconstruction project.

On February 26, 1988, the DRIVE Coalition entered into an agreement with Governor James R. Thompson to correct the problems on the $210 million Dan Ryan rehabilitation project. IDOT's first major letting—Dan Ryan—under STURAA resulted in 78 percent or $16.8 million in contracts awarded to WBE's, 16.9 percent or $3.365 million awarded to Hispanic MBE's, and 5.2 percent or only $1.12 million awarded to black MBE's. IDOT's minority and female work force goals for the project were 19.6 and 6.9 percent, respectively, which represented the bare minimum required by Federal guidelines.

Ten of IDOT's 14-member DBE advisory council, were non-DBE representatives. In addition, the black members of the council that charged that IDOT was insensitive and nonresponsive to their concerns and problems, most of which dealt with IDOT's racially exclusive prequalification requirements.

So, this was a situation as we entered into it in terms of the DRIVE Coalition. The DRIVE Coalition then requested——

Chairman **SKELTON**. Your 5 minutes are up. Do you have further comments?

Ms. **MATTHEWS**. Yes.

Chairman **SKELTON**. Please proceed.

Ms. **MATTHEWS**. I am sorry. Go ahead.

Chairman **SKELTON**. You may proceed.

Ms. **MATTHEWS**. The DRIVE Coalition requested and received a commitment from IDOT to set aside an additional $15.7 million in Dan Ryan and ancillary contracts, State-maintained streets in the city of Chicago, Eisenhower [I–290] and alternate routes. As a result, the Walsh and Madden joint ventures have each awarded an additional $1 million in Dan Ryan contracts to MBE's. In addition, IDOT's March, May, and June 1988 lettings have contained 18 quality sheltered market projects for MBE's; 14 of those sheltered market projects were awarded to MBE's, no bids were received on three, and one was withdrawn by IDOT for technical reasons.

The DRIVE Coalition recommended that IDOT adopt the following minority and female work force goals for the entire Dan Ryan project for phase 2. On page 7, you will see listed those particular changes.

Again, we started out with a combination of 19.6 for blacks and Hispanics and only 6.9 for women. As you see, there has been a drastic change. We now have in the skilled trades for minorities, 13.35 percent for minorities and 10 percent for women, and for the general labor force, you now have 56 for minorities and 10 percent for women.

So, we have seen a substantial increase there. To ensure the attainment of these goals, IDOT obtained a job pledge commitment from the prime contractors and subcontractors at their respective labor organizations to set aside and help facilitate a meaningful placement of 190 jobs for skilled and unskilled laborers.

As of March 16, the Chicago Urban League entered into a 7½-month contract for a $125,000 with IDOT to facilitate the 190 placements along with 10 of the aforementioned organizations that are also part of the DRIVE Coalition, and the rest of the information here goes into the progress we have made to date in regards to that particular contract.

Chairman **SKELTON**. What page is that on?

Ms. **MATTHEWS**. Page 8. Page 8 gives you background, and as of August 4, in terms of the 190 job placements, 119 workers have been placed—21 are black females, 18 percent, 2 are white females, 2 percent, and 14 are Hispanic males, 12 percent, and 82 are black males, 68 percent.

Of the 119 employees, 51 were laid off or were terminated, however, which only 9 have been recalled.

On page 9, you have an analysis of those placements. Many of them were for less than 1 week on the actual job, and page 9 gives you those statistics and breakouts. It also gives you the statistics and breakouts of the 119, how many were skilled and how many were unskilled in terms of those placements.

If I may, just one more minute, what we have done and what we are looking to this commission for assistance in doing legislatively on the Federal level.

The Chicago Urban League requested and received—we have received two joint ventures' certified payrolls for the project from IDOT. We are currently verifying the above minority and/or female participation data. On page 10. The Chicago League and the Illinois Department of Transportation in conjunction with the Illinois Department of Human Rights are reviewing and developing retention standards for construction employees.

We feel that with our particular placements, our people experienced an unusually high rate of turnover and layoffs, but we are conducting research to verify this and to set up guidelines in the future where this will not, hopefully, be a problem.

Based upon IDOT's current performance to date, we have no evidence that it will not live up to the letter and spirit of the agreement signed by Governor Thompson and DRIVE on February 26, 1988. However, we have not monitored IDOT's contracting and purchasing activities throughout the rest of the State. Based on information received several months ago, an overwhelming number of highway and prime subcontractors were awarded to WBE's. So, you still have that problem, that same problem that we rallied around in the first place. Therefore, we challenge this subcommittee of the U.S. Congress to reinstitute the two-goal system which called for separate set-aside goals for minority business enterprise firms and women business enterprise firms in DOT highway and urban mass transportation procurement. DOT's final rule failed to address the conferees' desire that participation of minorities and women should be equitably distributed throughout the construction industry, and that the implementation of the DBE program should not fall disproportionately on any one segment of the industry as it does today in the case of your WBE's.

[Ms. Matthews' statement, with attachment, may be found in the appendix.]

Chairman SKELTON. Thank you so very much. We do appreciate it.

Ms. MATTHEWS. OK. Thank you.

Chairman SKELTON. Glen Harston.

TESTIMONY OF GLEN HARSTON, PRESIDENT, ARCHWAY STEEL CONSTRUCTION CO., AND PRESIDENT, BLACK CONTRACTORS UNITED, CHICAGO, IL

Mr. HARSTON. Thank you, Chairman Skelton.

Distinguished Members of Congress, ladies and gentlemen, I am Glen Harston, president of Archway Steel Construction Co., and also president of Black Contractors United, the largest association of minority construction contractors in the Midwest.

Black Contractors United filed a lawsuit against the Illinois Department of Transportation in 1984 which was alluded to earlier. After an additional 4 years, the DBE/MBE program at IDOT is still not functioning properly.

With the passage of the 1987 Service Transportation and Uniform Relocation Assistance Act, Congress has now included women business enterprises, WBE's, as a presumptive disadvantaged group under the DBE program. This addition has worsened the bad situation.

Under the single goal, minority contractors, black and Hispanic, male and female, are being pushed aside in favor of recently certified WBE's. It is our contention that the majority of these recently certified WBE's are actually fronts for white male counters through stock transfers and incorporation of new enterprises.

On the Dan Ryan reconstruction project, for example, WBE's received 70 percent of the contracts let to qualified DBE's. On the resurfacing project on the Martin Luther King Bridge in East St. Louis, WBE's received 99 percent of all contracts let to WBE's.

This situation would not have been possible if these WBE's were actually newly established businesses. New construction companies do not develop this level of competitiveness this fast. Something is not right and the situation should be examined to find out how these companies are able to underbid older, more established DBE's as quickly.

Black Contractors United would like to see a system where contracts to WBE's—I am sorry—DBE's are awarded equitably among the presumptive disadvantaged groups. It is not fair for such a large portion of DBE contracts to go to any single class of presumptive disadvantaged group.

It should be seen as part of the U.S. Congress and Senate, the Department of Transportation, and IDOT's responsibility to design a program that ensures a more equitable distribution of contracts that have been recently awarded in a case. To do otherwise, only creates a situation where blacks, Hispanics, Asians, and legitimate female business continue to be locked out of the process, and we now have two privileged groups of contractors who receive all benefits.

Unfortunately, a return to the two-goal system would not solve all the problems encountered by MBE's. The problems that forced BCU to sue IDOT in 1984 are still present today. The one-goal system is not only a barrier to full participation by MBE's in contract award processes, IDOT's administrative procedures, prequalifications and certification procedures, bonding and prepayment to be concerns.

As a member of the Minority Contractors Alliance, we have urged IDOT to adopt some of the following proposals. IDOT should expand technical assistance and funding should be increased, adjustments made in the administrative procedure for prime contractors, submission of their WBE plan, advance payment to the WBE firms.

The State of Ohio, which has an MBE population half the size of this State, has a State support bonding and financial loan program for DBE's. In addition, Ohio has legislation that authorizes formal shelter programs. Unlike Illinois, spurred by the Black Caucus, Ohio amended its racially-exclusive purchasing act a long time ago.

Unlike Illinois, the California Office of Small Minority Business has implemented a red sticker program. This is intended to expedite the speedy processing of invoices from the DBE's, thus lessening the cash-flow hardship. Upon receipt of a red sticker invoice, the accounting systems are authorized to make prompt payment.

Unlike Illinois, Massachusetts charges public deposits to institutions which invest in small minority businesses. Most of this State's funds are deposited in institutions that do not have minority business enterprise investment programs.

We reiterate the critical importance of the pursuit and elimination of fraud in the certification process and continue refinement of procedures and requirements so that benefits are available only to the intended parties.

Prequalification procedures need to be adjusted. Firms bonded for $6 million in some cases can only be qualified, prequalified in the State of Illinois here to bid on $200,000 projects. The asphalt ownership requirement should be waived for work performed under the set-aside program for State-mandated roads within district 1 and other districts where there is a high population of minority contractors.

IDOT should reexamine its level of commitment to an effective and successful DBE participation program. If it is not assumed that the program will be effective, IDOT officials are not fully committed to its success, it will not work.

Hopefully, with increased input from minority contractors and community-based organizations, IDOT will commit itself to a program that will ensure an equitable distribution of contracts awarded to DBE's and address the deficiencies presently found in procedures and regulations with regard to DBE's.

In conclusion, quite honestly, there has been some progress in Illinois. It appears that IDOT is going to reorganize its MBE/WBE advisory board to reflect the makeup of its membership. It appears that there has been some movement in MBE's receiving contracts in recent State lettings, but much is left to be done.

I am honored to be able to testify before you today, and, if needed, I will be here on a monthly or weekly basis until the U.S. Congress amends section 106(c) of STURAA, 1987, to reinstate the two-goal system and sponsor legislation that would facilitate development of a comprehensive DBE program and encourage IDOT to eliminate racial exclusive prequalification requirements. Thank you.

Chairman SKELTON. Mr. Harston, thank you so much.

I understand Reverend Riddick just entered the room. Sir, would you please join us at the table?

Mr. Cleve Chapman.

TESTIMONY OF CLEVE CHAPMAN, PRESIDENT, MIDWEST CONTRACTORS FOR PROGRESS

Mr. CHAPMAN. Thank you, Mr. Chairman.

First of all, I would like to thank Congressman Hayes for having this hearing to investigate the problems with small black and other minority contractors dealing with the State, Federal, and also the cities, and the unions, and the lack of opportunity for our contracting community.

I would like to thank all the representatives who are present at this convention investigation.

Now, my testimony might be a little different from a lot of the other members because I felt they were going to talk about the issues since we have been talking about them for the last 2 or 3 years, or 5 or 6 years.

So, I thought I would hit on some other points that probably would not be brought up in this investigation.

~~First~~ of all, I want to introduce Midwest Contractors for Progress. We are a group of contractors and business people who are working with different agencies from Illinois and the Midwest to contract work with the cities, State, and Federal agencies to acquire available work for our members.

We feel our major concerns are never acknowledged by these agencies. We have sent letters to these agencies informing them of our plights. Our major problems are as follows: Payment for job completed. Our contractors are not getting paid in a timely manner from cities. Some of the contractors are waiting from 6 to 12 months to 2 years to get paid from the prime contractors who are doing business with the cities and the State.

There is no mechanism set up whereby the cities and State can pay these subcontractors directly if he is not being paid by the prime contractor.

Another problem we have is banking. Small black businesses have great problems in acquiring money from banks and lending institutions. We feel that this is one area that needs to be increased. The availability of loans to small black firms.

The processing time to apply for a loan from the initial loan package and the time that you are actually receiving the money is too long—6 weeks to 1 year at which time the company could fold.

The unions. We have problems with the unions also. The trade unions are not hiring enough young black apprentices working and training them to be good journeymen tradesmen. We need input from the Congress and Senate to set rules and regulations whereby the unions would have to hire a large percentage of blacks every year from every phase of construction and other businesses that deal with labor to increase the journeyman status in the unions.

Also, the hiring of the unemployed from these communities. The reason being is that these major unions, operating engineers, iron workers, et cetera, have a small black membership compared to the number of black population in the city of Chicago and the surrounding communities.

Training. I imagine everybody knows about the training in Chicago when you talk about dealing with the Washburn Trade School. Training of new young black workers. The problem is that these workers need to be trained from the freshman year in high school throughout trade school to be able to work well in the construction industry as skilled workers.

They should be able to read blueprints, rulers, and also be able to do surveying. We need more carpenters, cement finishers, et cetera.

Another problem area from my gathered information from across the State of Illinois and the Midwest, in most sections, the contractor getting the work are contractors who have not been in business long and who either give the work back to the majority contractor or use their equipment to fulfill subcontracting obligations with the prime contractors.

These contractors are employing contractors from the presumptive group, that is, white women, to circumvent the intent or purpose of disadvantaged business enterprise, and especially DBE's from whom, for whatever reason, depending on the prime contractor who fulfills the subcontractor's portion of work.

We have requested IDOT to set rules where the prime contractor to submit minority contractors at the time of bid. At one time, the prime contractor was allowed 5 days. IDOT changed it to 7 days, over the objection of the minorities on the DBE/WBE Advisory Council.

If the prime contractor has 7 days after the bid, he will have an unfair advantage over the DBE. The prime contractor will be able to negotiate with MBE's knowing that it will be awarded the contract, and it will be in a position to obtain greater price concessions for guaranteed work.

This way, the prime contractor will be able to obtain a competitive advantage over the DBE by being able to practice this type of bid shopping.

Last, the resident engineers with the cities and State agencies seem to take a superior attitude when they deal with so-called minority contractors. The contractors are treated unfairly on the job because the resident engineers have not dealt with minorities or disadvantaged contractors before.

Undoubtedly, they do not know what their job titles are, and they seem to want to be the superintendent on the job when dealing with blacks and not working with the contractor to get the job done in the allotted time.

Thank you very much.

[Mr. Chapman's statement may be found in the appendix.]

Chairman SKELTON. Thank you so much, Mr. Chapman. We appreciate it.

Mr. Peter Martinez.

TESTIMONY OF PETER MARTINEZ, EXECUTIVE DIRECTOR, HISPANIC-AMERICAN CONSTRUCTION INDUSTRY ASSOCIATION [HACIA]

Mr. MARTINEZ. My name is Peter Martinez. I am the executive director of HACIA, Hispanic-American Construction Industry Association, which is made up of contractors, architects, and suppliers in the Chicago area.

You have a copy of my testimony.

Chairman SKELTON. Yes; we made the announcement prior. We will put the testimony in for the record in full and you can summarize your written statement in 5 minutes.

Mr. MARTINEZ. Right. I am in support of most of the comments that have been made here, and, so, I would like to use my time in a different fashion.

Chairman SKELTON. Please.

Mr. MARTINEZ. I would like to use my time to ask questions of the committee.

Chairman SKELTON. Mr. Martinez, that, of course, is not the procedure. If you wish to raise issues, please feel free to do so. We are the ones that ask the questions. We are the ones that are proceeding the hearing.

Mr. MARTINEZ. Well, gentlemen, I think, you know, turnabout is fair play.

Chairman SKELTON. You may raise issues.

Mr. MARTINEZ. I will ask questions, and then you decide what you want to do about them.

I would like to know, since there has been ample testimony about the need for a return to the two-goal system, could I get some sense of what the committee's mind is about the need to return to the two-goal system.

Chairman SKELTON. That is what we are here about, sir. We have no answer to that. That is why we are seeking information from these folks.

We can tell you that there was an amendment offered in our full committee, the reason we are here, sir. I announced this in my earlier testimony. Just a moment, sir.

[Pause.]

Chairman SKELTON. There was an amendment offered that would require 65 percent of the set-asides to go to minority businesses leaving nonminority women-owned businesses eligible to compete for 35 percent of the set-asides, and this amendment was tabled subject to our holding hearings on this issue, and that is the purpose of our presence today.

Mr. MARTINEZ. OK.

Chairman SKELTON. Do you have other issues you would like to raise?

Mr. MARTINEZ. I think the other question that I would like to raise is what is the committee's position on setting larger goals for Federal funds and construction funds in the city of Chicago.

We have a major Federal project, a Federal building, that you are going to be financing here in Chicago. When a Government project is put up for bid in the city of Chicago, normally there is a goal of 35 and 5 set, I think.

The minority requirements requested for the GSA Building were nonspecific. They basically said it is a design building, and they basically said the directions were to do the best one could on minority participation, and my question would be why goals are not being set in a more specific fashion?

Chairman SKELTON. I appreciate your raising the issue. As I mentioned earlier, we are not here to——

Mr. MARTINEZ. Well, may I——

Chairman **Skelton** [continuing]. Answer those questions. Quite honestly, we do not have a consensus. We are here to seek information, Mr. Martinez.

Do you have other issues you wish to raise? Please feel free to do so.

Mr. **Martinez**. Those would be my two issues, that I believe that there ought to be a return to the two-goal system, and I believe that we ought to have more specific and higher goals on minority projects.

I think we are in a situation here where in the city of Chicago, you have a 62-percent minority population. You have a 42-percent minority population when you take in Cook County. That is a major percentage.

The economic redevelopment of this city is going to be greatly dependent upon the development of minority businesses. The Chicago Association of Commerce and Industry, which is a majority business association, approximately 4 weeks ago indicated that—quoting Department of Labor studies—black unemployment was down for the first time in 15 years and that drop in unemployment was attributed directly to what has gone on in the construction industry.

That is because of the kinds of goals that we have been pushing for in this area. If there were some real push on the part of the Federal Government, we would begin to see some major economic turnarounds in this city where we have very competent businesses and trades people.

Chairman **Skelton**. Do you have some further comments, sir?

Mr. **Martinez**. I am going to yield the remaining 2 minutes of my time to Taylor Cotton.

[Mr. Martinez' statement may be found in the appendix.]

Chairman **Skelton**. To Taylor Cotton? Is that your name?

Mr. **Cotton**. Yes.

Chairman **Skelton**. Who is along with Sharron Matthews of the Urban League, is that correct?

Ms. **Matthews**. Yes; Mr. Taylor Cotton.

Chairman **Skelton**. You are recognized for 2 minutes, Mr. Cotton.

TESTIMONY OF TAYLOR COTTON, URBAN LEAGUE OF CHICAGO, AFFIRMATIVE ACTION DIVISION

Mr. **Cotton**. OK. I have to align myself with Peter Martinez.

I would like to get some feel about the report. I would like to know if Congress really intended and/or instructed the grantees to ensure equitable distribution of DOT and UMPTA contracts at all of all sectors of the industry or all of the presumptive groups.

There has been a lot of debate and discussion about it. Was that really your intent?

Chairman **Skelton**. Are you posing a question, sir?

Mr. **Cotton**. Yes; I guess we were asking Peter to ask that question, to discuss that issue.

Chairman **Skelton**. We appreciate your raising the issue, but as I say, we are the ones that ask the questions and seek information.

If you have further comments to use up the rest of your 2 minutes, feel free to do so.

Mr. **Martinez**. We are just seeking information.

Chairman **Skelton**. Mr. Hayes is recognized.

Mr. **Hayes**. Specifically, are you asking this committee to set up goals and guidelines? Is that what you are asking?

Ms. **Matthews**. No; we are asking the intent of STURAA. If it were the intent of STURAA to produce the results that we have here, for one presumptive group is inordinately receiving benefits from the act at the expense of the other groups.

Was that intent because that is how it is being played out? We have been told on the State level that what corrective action was sought, we were told that no group was to receive favorable treatment. Yet, the law that you have set up does just that, in fact, where you have WBE's receiving an inordinately high amount of the awards of contracts to the exclusion of blacks and others who are also presumptive groups. Then, when you go to correct that, as we tried on the State level with IDOT and Governor Thompson, and they asked for a ruling as to how they could correct it, they were told no because that would show favoritism.

Chairman **Skelton**. I appreciate your raising the issue. In order for anyone to answer the question, we would have to research the legislative history, the debates on the floor, and, of course, we are not in a position to do so.

We do appreciate your raising the issue so much. We will keep that in mind.

Do you have further questions?

Mr. **Hayes**. I just want to say that this whole issue has certain political overtones, as you might well know. I do not want to get the Urban League involved, but those who have the power to issue—dish out the contracts—certainly have shown certain favoritism, and it is not that the people who have been short-circuited are left out.

I think the chairman is right. I think we have to take a look at this whole thing. I think it was raised by Congressman Conyers, and it was tabled, and we have not moved on it within the committee, I know, but we need to take a look at it.

There could be some merit to your thinking about establishing that.

Chairman **Skelton**. Thank you very much. We appreciate it.

Reverend Riddick. Is that the way you pronounce it, sir?

TESTIMONY OF REVEREND ED RIDDICK, ON BEHALF OF REVEREND WILLIE BARROW, NATIONAL EXECUTIVE DIRECTOR, OPERATION PUSH

Reverend **Riddick**. Thank you, Mr. Chairman.

Chairman **Skelton**. You are going to have to use both those microphones.

Reverend **Riddick**. First, we want to express our appreciation for being given this opportunity. We want to thank Congressman Hayes for being a cohost to this hearing along with you, Chairman Skelton, and I am here on behalf of and at the behest of our national executive director, the Reverend Willie Barrow.

Reverend Barrow has served since the inception of this situation as chair of the Dan Ryan Is Vital To Everyone Coalition. She is here, and I am sure she would be willing to answer some questions about her experiences.

I simply need to confirm much of what has been said here by the contractors and by other advocacy organizations and to indicate that Operation PUSH and Reverend Barrow as chairperson has received nothing substantive to show that there have been changes in the policies of IDOT and in the implementation of the set-aside programs.

A couple of our scholars, activist scholars, wrote an article which was intended to reflect the seriousness of the problem. They said it in somewhat humorous tones by indicating that the issue seems to be whether blacks and other minorities will sit aside.

Unfortunately, in this process, white female contractors have been persons who, in some sense, have been the very focal point of the inability of other minority groups to receive equitable portions of the contracts that are set aside.

But the real culprit seems to be a one-goal system which Ms. Matthews has addressed herself to, I think, in a very adequate way. Namely, that goal system has cluttered so many minority and other disadvantaged groups under the so-called disadvantaged business enterprise label that these groups end up contending with each other for a portion of that 10 percent, and the other 90 percent is allowed to be exempt.

This is not only true here in Illinois, but in a rather detailed article in the New York Times, the growth of contractual awards to white female contractors over against other minorities was detailed and delineated to some extent.

Now, when we met with the Governor, there was an agreement that the system as it was working was inequitable, and an agreement that an adjustment would be made. The Governor indicated that he would go to the then-Secretary of Transportation Birney and seek exemptions or an adjustment.

We have learned that his response was really less than adequate to us. For, as a matter of fact, he had the power to make the necessary adjustments and to mandate that there would be no disproportionate distribution of these contracts.

For, in fact, the Secretary of Transportation's own counsel has indicated that to extend disproportionate amounts of these contracts to any other presumptive group would, in fact, be a violation.

Now, our real problem today is not to quarrel about set-asides. Not to quarrel about that. But the fact that here is a department, $3.8 billion, $2.9 million of it in all forms of highway funds, $820 million of it at least in funds for highway construction. There are over 2,800 jobs in the department in the highway construction management section of IDOT. 1,100 or so engineers, less than 50 are black.

Engineering technicians——

Chairman **Skelton**. May I interrupt you at this point? I did not realize that Reverend Barrow was in the room. Would Reverend Barrow care to sit at the council table? If not, we will proceed. We do wish to recognize you.

Reverend **Barrow**. Thank you.

Chairman **Skelton**. Please proceed.

Reverend **Riddick**. In engineering technicians alone, more than 678 jobs, fewer than 75 are black. Over a period of 5 years, this department has dealt with between 12 and 15 companies that are minority companies. As of April of this year, our last report showed only one black company had been given a contract.

Now, it may be that they made the adjustment, but I think you see the pattern that exists.

We do not, and I want this made very, very apparent, we do not oppose female contractors. We do not oppose white female contractors. We oppose the disproportion. We oppose the type of thing that Brother Taylor Cotton was trying to raise a few minutes ago, which indicates that we are excluded and in the city of Chicago, you have some of the most experienced and the best prepared and the most sophisticated black contractors in the Nation.

But American Demographics Magazine published an article last year indicating that Chicago was losing the ground as a mecca for—I should not say mecca, but as a place in which minority businesses are seeing substantial growth and especially in the construction industry.

Black Enterprise Magazine confirmed the fact that nationwide, we have seen a substantive decline in the construction industry, and only, only in the last several months have the kind of adjustments been possible that Brother Martinez spoke of. We still have a 23.6 percent unemployment rate in the city of Chicago among blacks and almost 62 percent unemployment rate in the construction industry among blacks and other minorities.

I think that even though we are seeing some improvements, we need to see improvements of a substantive nature relative to the State of Illinois and its agency. The State of Illinois' agency, IDOT, was studied by Chicago Reporter Magazine. It was seen as one of the lowest performing of all of the State departments in terms of affirmative action.

In addition to that, we are saying that not only are we talking about Dan Ryan, RTA has submitted a $450 billion proposal over a 10-year period, $4.5 billion. We need to have a portion of that.

There is money referencing the building of airports, et cetera, at least $103 million, referencing the building and restructuring of airports. We need to have a portion of that. That is an adequate proportion. We can go on and on, and, so, I think the issue, of course, is whether, in fact, we are prepared to invest in our minority citizens, whether we see in the third wealthiest State in the Nation an obligation to see to it that the minority citizens of that particular State are given a fair chance.

We do not want welfare. We want to be on payrolls. Our contractors want to hire our people to go to communities and see in front of schools where there is operating activity going on, and in part being federally funded.

To see our young people sitting aside or to see on our expressways and roadways that we have very few of our young men and young women working is to see a combustible situation which will end in grave tragedy for the State of Illinois.

I do not ask that they be good to blacks and Hispanics. I ask that they be sensible to the future of this State.

[Reverend Barrow's statement presented by Reverend Riddick may be found in the appendix.]

Chairman **SKELTON**. Reverend Riddick, thank you, sir. We appreciate it so much.

Ladies and gentlemen, since we will be working through the noon hour and not taking a break for lunch, before we go to questions of this panel, we are going to take a 5-minute recess.

[Recess.]

Chairman **SKELTON**. Let the hearing come to order again.

We are short Mr. Harston and Reverend Riddick.

Mr. Hayes, we will go to you for questions, sir.

Mr. **HAYES**. Mr. Chapman, I have two questions for you.

Mr. **CHAPMAN**. Yes, sir.

Mr. **HAYES**. I am cognizant of the fact you are in the highway construction business.

Mr. **CHAPMAN**. Yes.

Mr. **HAYES**. There are rules. You have heard allegations here that there are rules regarding people who pour asphalt, that actually you have to own an asphalt company in order to be able to get a contract.

Are these rules established by IDOT, or I do not know that they exist anywhere else.

Mr. **CHAPMAN**. Well, from information given for the last 2 or 3 years, we found out those are rules that IDOT set themselves. The rules state that not only just for asphalt but for concrete, if a job has got a large portion of concrete, a large portion of asphalt, anything over 1,200 tons, you either have to lease an asphalt plant or own an asphalt plant, and then you can bid on anything over 1,200 tons.

Mr. **HAYES**. 1,200 tons.

Mr. **CHAPMAN**. Yes, sir.

Mr. **HAYES**. And have you had problems?

Mr. **CHAPMAN**. Well, I have had problems acquiring the bid documents to bid on any job that is over 1,200 tons of asphalt. You have to own the equipment.

Take, for instance, if I went out, and I leased an asphalt plant, which is almost nil, you cannot lease an asphalt plant from a prime contractor because, first of all, he does not ever give you a good price. So, why would he lease you the plant.

So, you never have an opportunity to bid because of the fact that you do not own an asphalt company itself, a plant itself, or certain equipment that has to lay down the asphalt or equipment—a roller or whatever you have to have to put asphalt in place.

Mr. **HAYES**. My second question is, and I will be through after this, Mr. Chairman, there have been charges that there is favoritism shown by IDOT or by some of the prime contractors in the awarding of contracts.

Some small business contractors, particularly on minority business, have come to me and said they were the lowest bidders, but for some reason they could not get the contract.

Have you had an experience of that sort?

Mr. CHAPMAN. Well, personally, I have not had that experience, but I will say, in the last year or so, I have been having problems other than problems that you directly involve with the bidding process.

I have had problems with engineering on the job, on the job engineering, and one of the problems is the quality of engineers being put with black contractors, minority contractors.

It seems to me that you will get a guy who goes strictly by the book and does not have any bend in construction. Any time you do construction, we are scrutinized more than the majority contractor. They would have a guy with a book in his hand and every time you make an effort to do something, then they can find a way to stop you because they are the engineers on the job and you are supposed to follow their direction.

It was kind of hard for me to understand how can a guy go and bid a job, a contractor go bid a job, then be under the direct supervision of the engineer that was employed by the Department of Transportation.

I always felt that I am the contractor on that particular job, then I should be the one that sees that that job gets done, not the engineer. His only job was to—I always thought—was to do the engineering work, but I have sent letters to the Department of Transportation asking them to clarify the responsibility of the resident engineer, and when I got the information back, they said that he is supposed to be the engineer on the job, and also we should be under the direct supervision of that engineer.

I still do not believe in that, but let me go a little further and talk about a few other things that happened to me in the last 2 months.

The month of June, they had a letter that came—well, let me go back a little further than that. The month of——

Mr. HAYES. Do it quickly because my time is expired.

Mr. CHAPMAN. OK. April or May. We had a couple of jobs that were bid and my bid never got to Springfield. I sent it by messenger. Now, I believe that I am being wiretapped or whatever, but my bid never got to Springfield.

Second of all, in the last month,——

Chairman SKELTON. Wait a minute. Did you use the U.S. mail or what did you use?

Mr. CHAPMAN. I used a messenger service, and they put it on the airplane there at Midway, and it never got to Springfield, and now I have to send it a different way.

Mr. HAYES. Is that IDOT's headquarters?

Mr. CHAPMAN. I really do not know. I do not know that, but I do know that every time I pick up my phone, I do not get a busy signal, and I was told over and over again that is because I am wiretapped, but I am going a little further on a few other incidents that happened.

In June, we were the low bidder on eight jobs, but right after that, I got a lien on me, which should have been put on me back in February, and which should have never been put on me in the first place, and I called up the person that was in charge of that and this is one of the letters that he sent me back.

I would like to read just one caption of it. "This will confirm our telephone conversation on July 13, 1988. I have an opportunity to review my files more thoroughly, and I did not notify your bonding company." I was concerned about why did he notify not me and not my bonding company. If they had a problem, then I should have been able to rectify the problem and not the bonding company.

Everybody knows that minority contractors have a problem getting bonding. Now, after those eight jobs, I also on top of that—we got on July 7, we showed a bad performance rating. Some of the jobs that were done back in 1983, 1984, 1985, were added to the job that was done in 1987.

Every year you get a performance rating. So, I called up one of the people at the department. So, on June 14, I got another performance rating that was satisfactory. Now, even though the numbers are different, I feel that sometimes when minority contractors try to be independent—when we talk about South Africa, but Illinois and South Africa are strange bedfellows.

Mr. HAYES. You can handle that, Mr. Chairman.

Chairman SKELTON. Thank you very much. Your time has expired.

Mr. Mfume.

Mr. MFUME. Thank you again, Mr. Chairman.

Mr. Harston, I have a question for you, and I would like to make a comment to Mr. Martinez, and Ms. Matthews, and maybe another question, and then a comment to Mr. Chapman.

The chairman has taught me well. Since we only have 5 minutes, I ask all of my questions and use up my time, and then your responses will be on the committee's time. I am sure he will understand.

I apologize. I have got to leave in 30 minutes to catch a flight back to Washington, but I am very interested in some of the things I heard.

One thing you raised, Mr. Chapman, I certainly agree with this, this whole notion of trade unions doing more to provide a way for us to increase the number of journeymen we have in the number of construction trade industries is extremely important.

I, like Congressman Hayes, consider myself a friend of labor, and I think it is important that we use forums such as this and whatever small instruments we may have otherwise to impart to labor the real need for this sort of thing to take place so that we do not get into a situation where people are not necessarily there for jobs that may be there or missing opportunities to go into business for themselves.

So, I agree with you on that. Ms. Matthews, I have a copy that was attached to your testimony of a meeting that took place with Governor Thompson on February 26. This was a meeting that was vital to every coalition as Dan Ryan Is Vital To Everyone's organization.

I read it over, and I looked at the number of things that the Governor sort of conceded in his positions and what was agreed to and, yet, in listening to some of the testimony, particularly the testimony of Mr. Harston, not a whole lot has come out of this February 26 memorandum of understanding and agreement, except perhaps a reorganization of the advisory board of WBE's and DBE's, which I find distressing as well as I find interesting.

My colleague, Mr. Lancaster, raised the question earlier about what, in fact, is IDOT doing and what kind of pressure is being brought to bear. Congresswoman Cardiss Collins who was here earlier also indicated a rather disturbing fact in her testimony, she said that rarely did IDOT perform onsite inspections to verify the true status of certified firms and that included those whose written submissions were questionable on their face.

In another instance in the testimony that she gave, one example was given of the contract that had been certified as a minority every year since 1983 without IDOT ever once documenting that, in fact, the contractor was, indeed, a minority, and the list goes on and on.

I listened to Mr. Martinez and his question that he raised to the committee, and I think it was a question that you expanded on as to whether or not there was any real intent on behalf of Congress or the Federal Government to sort of disadvantage one group by favorably empowering another group.

I think I can go on the record by saying I do not believe that was ever the intent of Congress. The problem is, as I stated earlier, when you have this weird arrangement of one pool of money, and that pool is limited to begin with, and you increase the number of participants who vie for the contracts, different sort of things happen in that equation, happen in that formula. In this instance, we see a situation has been well documented by a number of news services and to that extent by the Department of Transportation that there is, to some extent, a disadvantage starting to evolve now within that particular arrangement.

I would be interested, Mr. Martinez, in getting, however, the name of the local government building that you talked about, the local Federal Government building that was soon to be under construction, where the language, I think, from GSA was that you make a best faith effort or a good faith effort to try to involve minorities, so that maybe perhaps through a resolution of understanding with the Congress or some other forum, maybe we can get word to GSA and the agency involved that perhaps there ought to be some sort of directive at least, given the nature of the situation here in the State of Illinois that makes it a little more specific with regard to the awarding of contracting and subcontracting work.

Now, this whole matter of semantics and whether or not a person qualifies as a DBE, or a WBE, or an MBE, is kind of interesting because semantics sometimes cause a lot of our problems.

There is an old proverb that says it is not what you call me, it is what I answer to. Unfortunately, people are answering to a lot of things that may not, in fact, be applicable to their own circumstance and what they are trying to do.

In that regard, it seems to me that certainly the Congress of the United States has some responsibility as it relates to the Department of Transportation coming out of these hearings, at least to give to the Department of Transportation a little more direction in terms of what they ought to look at and how they perhaps ought to aggressively follow up and review State-by-State situations where there is money being awarded under this particular transportation act to make sure that things like what is happening here with the asphalt requirement do not continue to crop up.

I asked the chairman earlier, and I would suspect that maybe if we look closely, we will find one or two other States where it may not be an asphalt requirement, but other requirements that are not part of the Federal law but may be the interpretation of the statewide Department of Transportation at work to the disadvantage of not only minority firms, vis-a-vis black and Hispanic, but also to the disadvantage of women businesses as well.

It seems to me also that certainly here in the State of Illinois and the city of Chicago, that there has to be a continued and vigorous effort with regard to IDOT. It seems to operate as pretty much of a free agent.

The Governor's intervention notwithstanding, it seems that very little has come about as a result of that, and it is disheartening.

I do not envy or like the idea, and I do not think the chairman does either of going around the Nation to these trouble spots with this committee, a well-meaning committee with a good chairman, trying to seek out these barriers to access. I would prefer that they not exist so often or, if they exist, maybe they exist within the Federal Government, and then we can take corrective action in Washington.

But when they exist because of the interpretation of the local government or a local governor, it is distressing and disturbing, and I can only add to the comments of my colleague, Mr. Lancaster, that I certainly hope more is done here in Chicago to continue to focus in on the actions of IDOT and perhaps the inactions as well.

Mr. Chairman, I am sure I have exhausted my time and, so, with that, I will conclude my remarks.

Chairman SKELTON. Thank you so much, and we do understand when your airplane leaves, you have to be on it. So, we do appreciate your being with us.

Mr. Lancaster.

Mr. LANCASTER. Mr. Chairman, I believe that Ms. Matthews wanted to respond to one of the comments that Mr. Mfume made.

Ms. MATTHEWS. Yes; in regards to the increasing of the set-aside pot of money, that we need desperately. However, it is not going to help our particular situation here in Illinois unless it is specified that no group is allowed to be awarded an inordinate percentage of contracts, and that in the event this occurs, corrective action may be taken to rectify it. Otherwise, we are going to have the same situation again.

You will have more contracts available for set-asides and more WBE's being awarded those contracts in disproportionate numbers than the other groups.

So, if you are going to change one thing, which is desperately needed, more funds available for set-aside programs, you also have to change the legislation so that there is access, at least equal access by the presumptive groups to that pot to compete, not with one another, but for the contracts. I wanted to share that.

Mr. MFUME. Let me interrupt Mr. Lancaster.

Can I ask unanimous consent for one additional moment?

Chairman SKELTON. Absolutely.

Mr. MFUME. I would just like to ask Mr. Harston with regard to that.

Does BCU, which filed the original suit some 4 years or so ago, plan to enter into some action again this time in conjunction with—I believe the group is NCA, Northern Contractors Association—as it relates to that?

Mr. HARSTON. Yes; we have been also talking with other contractors' groups around the country. They have been asking us about our lawsuit and the grounds, and I think this time, when we do seek legal action, we will be a lot better prepared.

Mr. MFUME. Thank you both.

Thank you, Mr. Chairman.

Reverend RIDDICK. Mr. Chairman.

Chairman SKELTON. Mr. Lancaster, please proceed.

Mr. LANCASTER. I am curious, and anyone may answer this question who knows the answer. Does the State of Illinois have set-aside programs with regard to State contracts in departments other than the Department of Transportation? And, if so, have problems within that department surfaced in other departments?

In other words, are there problems with the entire mechanism of the Illinois State government or is it just one department that seems to be particularly insensitive to black minority contractors?

Ms. MATTHEWS. The Illinois Department of Transportation is currently exempt from the State set-aside guidelines in favor of the Federal guidelines.

Wholly State-funded projects are not exempt, however.

Mr. LANCASTER. Now, how do they operate? Are they being similarly distorted in the awarding of contracts, or do they more closely approximate the kinds of contractors that are out in the field available to bid?

Ms. MATTHEWS. The problem is industrywide in Illinois and throughout the country.

We are currently conducting research, Chicago Urban League, for more statistics in regard to that because we do feel inequities exist. We have not, however, been monitoring the entire statewide contracting and procurement process out of IDOT at this point.

What we do feel from what we have seen, there is a problem that is systemic throughout the whole department on all of its contracts throughout the State and in other State departments also. This is not just IDOT.

Mr. LANCASTER. That was my original question. Do other State departments have minority set-aside programs, and are they being administered more fairly than those administered by IDOT?

Ms. MATTHEWS. To answer whether or not they are being administered more fairly, we do not have the statistics to share with you in terms of comparisons. That is what we are working on.

Mr. LANCASTER. Tell me what your gut feelings are.

Ms. MATTHEWS. As to whether or not they are fair, no; that is a problem to begin with.

Unfortunately, the same type of status quo processes as far as barriers for minorities, particularly blacks, occurring with the contracts—you see that throughout the whole system, the State's procurement system.

We have been working with the minority business development enterprise agency on the State level to help strengthen that particular monitoring agency. It itself is in trouble in terms of the reports that have been coming out of the State on its disbursement of contracts to minorities. They are rather low.

Some improvements are being made, but, still, they are very low.

Mr. LANCASTER. Reverend Riddick, did you want to comment on that?

Reverend RIDDICK. Yes.

Congressman Lancaster, let me say that we attempted to make an analysis of the annual report of the central management agency for the State which handles many of the procurement contracts, and we have found similarly to what Ms. Matthews has expressed as her gut feeling, a matter to be somewhat true.

That is that these particular programs are not being equitably managed or equitably handled.

Mr. LANCASTER. Now, in the first panel, there was testimony that the statistics provided by the Federal Highway Administration indicated that the breakdown of contracts had not changed nationally, and that, in fact, the black minority contractors were still receiving at the rate of 10 to 12 percent of the contracts and that women were in the 3 percent range, and that there had not been a disproportionate change nationally.

Does anybody have any feel for why Illinois is so different from the rest of the country in this particular area?

Mr. HARSTON. Yes, sir.

Earlier testimony under Congresswoman Collins' hearings, it is our gut belief that the Illinois Roadbuilders Association and the Association of General Contractors has very strong influence over the Illinois Department of Transportation, and, like I say, the percentages nationwide, I cannot really justify, but I would be willing to bet that the percentages in Illinois since the one-goal system has been enacted, I am certain they will show that women-owned businesses, white women-owned companies, recently certified, have without a doubt gotten more of the proportionate share of contracts in the State.

If I may, you talked about the asphalt plants. Cleve might have failed to mention that some of the equipment ownership that has to be leased, I might add, has to be leased before you bid the job. In other words, if it is a $60,000 concrete paving machine, you have to go out and lease that, and then you bid the job.

Mr. LANCASTER. Do you know if that is regulation by IDOT or by the statute?

Mr. HARSTON. That is Illinois Department of Transportation regulation.

Ms. MATTHEWS. It is an administrative policy.

Mr. HARSTON. Administrative policy.

Mr. LANCASTER. Has anybody brought suit on those requirements? I cannot imagine any court upholding that type of——

Mr. HARSTON. Well, after our lawsuit in 1984, that was one of the reliefs that they gave us. The 1,200 asphalt participation—under—1,200 tons. They let us bid on that, and then go out and lease the equipment, and then you can bid on the concrete paving also.

Also, I might add that we are experiencing problems we are having with the resident engineers on these jobs. These engineers are your first-level of affirmative action officer.

Mr. LANCASTER. We have not made enough progress in North Carolina, and we are in the South, but I am alarmed at what I heard here in Chicago today.

Ms. MATTHEWS. If I may, just in terms of one statistic. At the point where DRIVE, the DRIVE Coalition entered into discussions with IDOT about just the Dan Ryan project, which is one of the largest for Chicago, at that point, 60 percent of the contracts that had been let were awarded to WBE's. Only $1.1 million out of the $87 million at that point had been awarded to a black-owned company.

Now, we all know what you can do with statistics, and then also when you have to do them nationally, in terms of that kind of thing, that does not play out. You do not see that. But, locally, we have a lot of statistics that we can share with you to tell you what is happening here in Chicago and in Illinois.

Mr. LANCASTER. No further questions.

Chairman SKELTON. Thank you.

Sharron Matthews, let me touch on a subject that Congressman Hayes alerted me to prior to this.

You mentioned that a large amount of minority workers are turned over within a week or less. Can you account for that? I am talking about the Dan Ryan project.

Ms. MATTHEWS. Well, we have as part of the—what we thought would have been a corrective action-type program—the agreement here that you have that was signed by Governor Thompson and Reverend Barrow on behalf of DRIVE.

There were about 200 jobs left at that point when we did this agreement, 200 jobs that had not been filled for phase II. IDOT asked us to assist in the filling of those jobs with people who were parts of the communities who were concerned about this and available to work.

So, we did refer people, have them placed, and as you see on page 9, out of the 119 placements that we had made, you see 51 worked less than a week. We were told that this was not unusual, that in the construction industry you have high turnover.

When we asked the prime contractors if we could see their records of their people, people that had been referred by them, what the rate of turnover was, they said it is none of our business.

So, we then——

Chairman SKELTON. You have nothing to compare it to?

Ms. MATTHEWS. Well, subsequently, we asked IDOT if we could see their records, of which they have shared some of them with us, and we are now setting up a computer comparative analysis so that we can see what the comparison actually is.

Chairman SKELTON. Would you be kind enough once you receive that information, and I will now make a formal request of you, to send that to us so we can have that as part of our hearing record? I would certainly appreciate that, and we will look forward to your doing that.

Ms. MATTHEWS. We would be more than happy. There is a feeling, and we just need the statistics to substantiate how much, but there is a definite feeling that our people were experiencing a much higher rate of turnover than any others that were placed there because they came through the DRIVE Coalition in terms of the referral process that we set up with IDOT.

Also, we found out that IDOT itself does not have per se criteria for what constitutes a placement. How long does one work in order to say actually there was a placement. There are other areas like turnover, that is, terminations, layoff, and retention procedures. It also does not have any criteria for definition of—to regulate the contractors.

This is not something that just started with us. It has been going on before, although it is more evident now because it is just so blatant, blatant racism. That is what we are saying.

Mr. HAYES. Will the chairman yield?

Chairman SKELTON. Yes; I will yield to the gentleman.

Mr. HAYES. When you send in the information, it will be helpful to us, to me particularly, since the unions are the conduit through which these people get the jobs, would you include in that list the specific unions to which people might have gone to?

Ms. MATTHEWS. No problem. We would be more than happy to.

Mr. HAYES. Thank you.

Chairman SKELTON. Yes, Reverend; do you have a comment?

Reverend RIDDICK. Yes, Mr. Chairman; I think one of the concerns we have, and I think it addresses some of the things that have been raised by Congressman Mfume is that I have to also take the additional step of taking some remedies.

For example, Mr. Chapman has spoken about the bonding program. Ohio has a model bonding program. We have asked IDOT to take a hard look at that. As far as we know, there have been no results of the investigation relative to applying it.

State Senator Collins, who happens to chair the Transportation Oversight Committee, also urged that IDOT would establish budgetary funds to assist contractors so that they in some sense could perform. As far as we know, that has not been done, in a $3.7 billion budget, and I think, of course, the question of certification procedures.

Congressman Mfume, I really think, especially in light of the kind of things that Congressman Parren Mitchell has raised, both in terms of when he served in Congress, former Congressman Mitchell, and the matter of what the Minority Business Legal Defense Fund has been trying to deal with.

The issue of certification procedures is a very devastating issue for us, and numerous companies are certified that do not have proper credentials, that have not in some sense represented themselves in terms of their submittals in a proper manner.

I think these particular factors are extremely important in terms of trying to deal with the problem. We must have affirmative action at every dimensional level if we are to participate.

Chairman SKELTON. Thank you.

I have a question. We could go on and on, but you have been a very patient panel, and I do have a question I would like to ask three of you.

I will ask you first, Mr. Harston. You stated your group supports the two-goal system. Do you have recommendations for this two-goal system? I will also ask Mr. Martinez. I will also ask Reverend Riddick if he and Reverend Barrow would be kind enough to answer this same question.

Mr. Harston.

Mr. HARSTON. Yes, sir; we would hope they would be more reflective of the population in the metropolitan area of Chicago and in other highly minority populated areas, such as East St. Louis. Something that would—am I understanding the question right?

Chairman SKELTON. The problem is that whatever we do would be a national goal. It applies to Idaho and all other States.

Please proceed, sir.

Mr. HARSTON. OK. Right now, I think the present goal is no less than 10 percent of the funds expended by the various grantees. Certainly, it has been alluded to earlier about that, this is 10 percent of the entire Nation where 90 percent is left for the majority contractors.

We would hope that these goals could be raised, and there would be certain percentages for women-owned companies and certain percentages for disadvantaged business enterprises.

I am afraid I am not at this present able to give any actual percentages of what we would recommend.

Chairman SKELTON. Mr. Harston, you and the other members of this panel please feel free to send us a recommendation if you have one which you would like to make part of the hearing testimony, within 30 days from today. Simply send a letter to us, addressed to me, and we will make it part of the record.

I will ask the same question of Mr. Martinez.

Mr. MARTINEZ. Mr. Chairman, I am not clear about what you are intending to get at. With respect to the two-goal system, we believe that has got to be implemented because it is the only way to do an equitable distribution.

Chairman SKELTON. Yes; do you have recommendations on figures for us?

Mr. MARTINEZ. Well, I think it would be difficult to do it nationally. I think you would start—if on a national figure, you might be getting into a situation where you would be creating it.

I mean, if you go out to, as you indicated, to Idaho or something like that——

Chairman SKELTON. So, your testimony would be that——

Mr. MARTINEZ. It should be reflective.

Chairman SKELTON [continuing]. Would be a reflective figure based upon State, based upon less size in a State, or how would you recommend, Mr. Martinez?

Mr. MARTINEZ. I think that the SMSA is a good reflection. It should reflect the SMSA of that area. If we dealt with that in this area, we would be talking about a reflective percentage.

Chairman SKELTON. Reverend Riddick.

Reverend RIDDICK. I think I would want to modify SMSA, and I say modify because we have seen those things done so many different ways. The Urban League has had on occasion to intervene with specially prepared facts in the past in order—final availability figures—in order to get even good SMSA statistics.

We have had experiences here in the Chicago area with the Department of Labor that are just absolute horror stories. Just in terms of getting final availability figures.

So, I say a modified SMSA. At the present time, Reverend Barrow has submitted a letter supporting Augustus Savage's proposed amendment referencing the one-goal structure, calling for an expansion referencing that matter, and we support that amendment.

Chairman **Skelton**. Thank you so much.

Ladies and gentlemen, this concludes this panel. We are most appreciative of your being with us and appreciative of your time and your prepared testimony as well as the comments you have given today.

Ms. **Matthews**. Excuse me, Chairman Skelton.

Chairman **Skelton**. Yes?

Ms. **Matthews**. May I ask you this? In terms of the timetable for your committee, can you give us a sense of what we can expect as followup and some type of time period?

Chairman **Skelton**. At this moment, we cannot. We still have a great deal of work to do. We need the information within 30 days for this particular hearing, however. I cannot give you a timetable. As you know, we are nearing the end of the legislative session, and we will not be meeting as a Congress in all probability past the first week in October.

So, this issue will undoubtedly go over to the first of the year. If we could solve it this year, we would love to do it, but I do not think we can be that optimistic.

Thank you.

Ms. **Matthews**. Thank you.

Chairman **Skelton**. We thank Mr. Mfume for his being with us today. The next panel is panel three, Carolyn Jordan, Hedy Ratner, Marilu Meyer, Jacqueline Bradley, and Marjorie Herter.

We will ask Mr. Glendis Hambrick to join this panel as well. Please remove Mr. Chapman's name and prepare one for Mr. Hambrick, will you, please? Thank you.

We will start with Carolyn Jordan.

TESTIMONY OF CAROLYN JORDAN, BOARD MEMBER, ILLINOIS ASSOCIATION OF BLACK WOMEN BUSINESS OWNERS, AND PRESIDENT, CAROLYN JORDAN & ASSOCIATES, CONTRACTORS

Ms. **Jordan**. Good afternoon.

Chairman **Skelton**. You will have to use those microphones, and put this short one closer to you because it does not project unless you do.

Please proceed, Ms. Jordan.

Ms. **Jordan**. Thank you.

The title of my presentation is Systemic Elimination of the Black Woman.

Chairman **Skelton**. Excuse me. I will repeat again for this panel. Attempt to summarize your testimony within 5 minutes. Your full testimony will be submitted in full for the record. We would urge you to stay within the 5 minutes.

Please put your microphone closer to you. We cannot hear you that well. Thank you.

Ms. **Jordan**. Thank you very much for those comments, Mr. Chairman.

I tried to prepare a presentation that would take exactly 5 minutes. So, I am very comfortable with reading this testimony into the record.

My name again is Carolyn Jordan, and I am a board member for the Illinois Association of Black Business Women Owners and the president of Carolyn Jordan & Associates, Contractors. I am a sewer contractor, heavy highway.

I am pleased to present this testimony before the 100th Congress, U.S. House of Representatives, Committee on Small Business.

I would like to thank the Honorable Chairman, Mr. Ike Skelton, and the Honorable Congressman Hayes for housing this meeting in Chicago, IL. Special thanks to all persons also that are here to testify on our behalf.

We are glad that we have this opportunity to share and voice our concerns.

The Illinois Association of Black Women Business Owners is a not-for-profit membership and networking organization of 1,033 minority business women owners. The organization provides an advocacy base for minority women business owners and serves as a data base to disseminate relevant information throughout our network.

We provide technical assistance to our members and provide an open forum for issues affecting the minority female business owner. The most outstanding issues confronting most black and minority women today are the barriers in contracting that carry a polite but lethal syndrome. The acronym, PBLS, known to black women as the one-goal disadvantaged business enterprise, where all minorities are lumped together.

The result of combining the MBE and WBE goals into one has virtually eliminated the participation of the black female from the construction industry. Most of the white males, prime contractors, are subcontracting to the white females since the new law has made it possible.

Basically, the system discriminates, and the people that implement the system condone a system that allows only white males and white females the opportunity to work and earn a living while the black and minority women sit back and get more and more frustrated until she quits or goes out of business.

The intent of the law, ladies and gentlemen, is to maximize participation of minorities and women within an industry that has been dominated by men and to prevent discrimination against women in the industry.

However, the one-goal system, MBE, is systematically excluding black women from the subcontracting and contracting industry. The intent of Congress has not been realized. The people that implement the law continue to discriminate against the black and other minority women.

For example, in reviewing the statistics and contract dollars allocated to black and minority women for the city of Chicago and the State of Illinois, Department of Transportation, black women received less than 2 percent of the total dollars allocated.

This underutilization of blacks and minority women represents a very serious problem for compliance with Federal, State, and local laws. There are many loopholes in the system that need to be addressed.

For example, a black contractor is awarded a subcontract, completes the contract in a good workman- and workwoman-like manner, but the prime contractors refuse to pay the subcontractor. As a result of nonpayment, the subcontractor experiences serious cash-flow problems.

On the other hand, the project's owner has regularly paid the white male contractor for the subcontractor's work, but the prime deliberately withholds the subcontractor's payment for 30, 60, 90, and 120 days, and forces the subcontractor out of business.

Once the subcontractor goes out of business and files bankruptcy, the prime contractor keeps the subcontractor's money and that money becomes clear profit to the prime contractor.

There is no protection for the subcontractors nor any mechanism to address these types of problems. The only recourse the subcontractor has is the court system. The attorneys' bills are oftentimes more than the profit built into the subcontract.

Small disadvantaged firms are then forced to expend extra dollars to recover earned income. The prime contractor is aware of the financial dilemma since he is withholding your payments. The polite but lethal syndrome again——

Chairman SKELTON. May I interrupt you right there?

Are you referring to Federal contracts or other contracts?

Ms. JORDAN. I am referring to both, sir. Where Federal money is involved, I call them Federal contracts.

Chairman SKELTON. OK. There should be a remedy coming through very shortly.

Ms. JORDAN. It is not here now.

Chairman SKELTON. Which your Congresswoman and I have both strongly supported. The Prompt Payment Act, which, of course, will apply to subcontractors on Federal projects.

Ms. JORDAN. Great.

Chairman SKELTON. I alert you to that. We passed it just this last week. No; I guess about 10 days ago in the House, and we are in conference with the Senate, and we should have something on that. So, if you need information on that, feel free to write any of us.

Ms. JORDAN. I appreciate that.

Chairman SKELTON. Excuse me for interrupting.

Ms. JORDAN. That is all right.

The polite but lethal syndrome presents barriers that black women have a difficult time trying to overcome just to survive within the industry. The access to legal assistance is very high and oftentimes not affordable. The black woman's struggle is without end because you fight to get the job, you fight to finish the job, and the fight is forever to get paid.

Again, there is no system to penalize prime contractors that are wrong-doers. The court system appears to be insensitive as it relates to the abuses of black women by white male contractors. The good old boy network, if you will, includes contractors, lawyers, governmental administrators, and many others, all of whom deny that they are prejudiced, but their actions speak louder than their comments.

For example, I was involved in a joint venture project at O'Hare Field. My partner and I successfully completed the project and upon completion, we were to split the profit. My partner, Peter Del Ricco, a white male, refused to honor the joint venture agreement.

I sued for relief, and during the trial, my partner, Peter, stated that he only entered into this agreement because my face was black, and that it was necessary to use a black female to secure the contract.

Furthermore, that he never ever intended to honor the joint venture agreement and, therefore, I am not entitled to my share of the profits nor equal distribution to our equipment.

Here is a white male that gives judicial binding testimony from the witness stand of willful wrongdoing and absolutely nothing happens to him. The system condones this type of behavior through its silence. I have incurred over $100,000 in legal fees fighting a case that seems hopeless.

My partner has been allowed to keep my money and equipment and enjoy the fruits of my labor. His attorneys, Donald O'Brien and Kathleen O'Dekirk, have been successful in securing court orders that sanction the discriminatory actions of my partner. The attorney O'Brien represented the joint venture and then, when my partner and I began to disagree, attorney O'Brien represented my partner against me in the litigation, in the litigation that continues today.

I believe that attorney O'Brien has a blatant conflict of interest, but the court disagrees. The polite but lethal syndrome is constantly working toward the demise of the black woman's rights.

I ask you, what is the cost and color of justice. As a result of fighting for justice and equality, I have been blackballed by other white contractors within the construction industry. Whereas, the good old boy network, if you will, has decided to limit my participation in construction.

Since the threats of bodily harm and harassment are not effective barriers, the power structure has decided not to pay me for work completed on two other projects for a total of $400,000. I have been sued by each of the contractors and forced into a legal system as a defendant, stripped of all financial resources. These are very difficult barriers to overcome. They are legal but lethal. All to deter the minority woman contractor.

But we must never ever give up because anything worthwhile is worth fighting for. White males are reluctant to give up power and have been allowed to develop an insatiable greed for money and power which inhibits their sense of vision and respect for the law.

In summary, Congress has created its own minority, the white female on behalf of white lobbyists. We must undo the ills of manner and restore justice to the real minority groups, the blacks, the Hispanics, the Asians, and the black women.

Remedies as I see them are return to the two-goal system, a certification process for banks, bonding companies, and insurance companies, and material suppliers, whereas they certify to do business with the minority contractors as well as the prime, and to hold the price constant.

The third remedy is an arbitration system for the resolution of disputes between the prime contractor and the subcontractor that excludes any and all court action.

Arbitration is mandatory and should be a part of the contract document and signed by all parties. All decisions of the arbitrator should be binding. The team of arbitrators will be equally divided between minorities, whites, and women. Criminal laws must be promulgated to proscribe wrongful conduct by banks, security companies, insurance companies, and lenders, which discriminate against minorities and black contractors.

The criminal proscription must contain penalties to deter wrongdoers that discriminate. The penalty should include a minimum of 1 year incarceration in the penitentiary.

Last, but most importantly, suspension for 1 year from participating in all governmental contractors and the possibility of being barred upon conviction of a second offense.

Gentlemen, that concludes my presentation.

[Ms. Jordan's statement may be found in the appendix.]

Mr. HAYES. Ms. Ratner.

TESTIMONY OF HEDY RATNER, CODIRECTOR, WOMEN'S BUSINESS DEVELOPMENT CENTER

Ms. RATNER. Thank you, Congressman Hayes.

The Women's Business Development Center that I am representing today is a nonprofit organization committed to the economic development and self-sufficiency of women, majority and minority women, and their families.

Mr. HAYES. If you would pull that mike up just a little closer?

Ms. RATNER. Yes; thank you.

The center provides counseling, entrepreneurial training, support groups, networking, financial assistance, and, as a priority, Government and private sector opportunities for women business enterprises.

We work closely with the Federal agencies, State of Illinois, city of Chicago, Chicago public schools, and various local government agencies providing assistance in identifying women business enterprises as suppliers and vendors.

We provide training and consulting in the area of WBE contracts, subcontracts, and procurement, and are now providing certification of women business enterprises for the private sector.

We work with thousands of women business owners in the metropolitan Chicago area, and 50 percent of our staff, clients, and our membership are minority women.

Government has a less than stellar record of purchasing from women business enterprises. We wish to commend Congressman Hayes and Congressman Skelton and other members of the subcommittee for their willingness to research and investigate the Department of Transportation DBE program and its impact on minority and women-owned business.

Additionally, we commend the subcommittee members for their desire to provide a strong and forceful set of goals, guidelines, and implementation procedures to provide increased business to minority and women business enterprises. Those groups who historically have not had these opportunities and who have historically been discriminated against.

The Women's Business Development Center and the thousands of women business owners with whom we work encourage the reconfiguration of the disadvantaged business enterprise, women business enterprise, minority business enterprise program into separate categories.

We would also like to propose an increase in the federally mandated set-asides and an increase in the allocation for women and minority businesses.

Background on Women's Business Enterprise right now. The fastest-growing segment of the economy in the United States today is women-owned business. By the year 2000, the end of this century, 50 percent of all businesses in this country will be women owned.

In Illinois alone, there are a 130,000 women-owned businesses, most in the metropolitan Chicago area. Because of historical discrimination and the lack of business enterprise opportunities, we propose that percentage goals for minorities and women be increased and placed into separate categories.

Placing women and minorities into the DBE category makes it impossible to track the progress and growth of either group and pits minorities and women against one another. A circumstance of unfair competition to be avoided at all costs.

All those who have been historically disenfranchised should work together to increase minority and women business enterprise participation in Government and private sector contracting. The Women's Business Development Center is a member of the alliance. Most of the members of that alliance spoke in the previous panel and on this panel.

A coalition of minority and female contractor associations, including Hispanic-American Construction Industry Association, Black Contractors United, Federation of Women Contractors, Midwest Contractors for Progress, we work together so that we can all work to further the economic development goals of minorities and women.

Labor research indicates that the earnings of people in our society are not equitable. White males earn more than minority males who earn more than white females who earn more than minority females. Business statistics appear to parallel employment statistics.

As thinking people realize that affirmative action is not limited to jobs, opportunities were created for women and minorities to start and expand their own businesses and compete in previously inaccessible markets. Government led the way. So can the enabling legislation and the accompanying certification and monitoring processes at the Federal, State, and city levels.

When we speak of historical disenfranchisement, we include both minority and majority women as well as male minorities. Minority and majority women as well as male minorities have been disenfranchised. Federal and local contracting goals have been established and implemented to overcome the legacy of historic racism and sexism that have prevented the minority- and female-owned businesses from competing in the mainstream.

However, unfortunately, there are abuses. Goals and guidelines are established for businesses at least 51-percent owned and operated by minorities and women. The Women's Business Development Center and other organizations here today are concerned about the abuse of those goals and guidelines and the implementation of these business opportunities by fronts who are not female or minority-owned and controlled.

Although the Federal and local government agencies have imposed stringent regulations and certification requirements to expose businesses which are not 51-percent owned and operated by women and minorities, there are some who, unfortunately, slid through.

We support even more stringent certification requirements and preaward and post-award monitoring to ameliorate these abuses.

Thank you for allowing the Women's Business Development Center to present our recommendations to this august body.

[Ms. Ratner's statement may be found in the appendix.]

Mr. HAYES. Ms. Meyer.

TESTIMONY OF MARILU MEYER, PRESIDENT, CASTLE CONSTRUCTION CORP.

Ms. MEYER. Thank you very much, Congressman Hayes.

I would like to, first of all, compliment the subcommittee as all being sponsors of House Resolution 5050 which every woman in this room should get a copy of and help them to pass in Congress.

Second, I would also like to request, since I am not allowed to ask, I would like to request that possibly in the next session of Congress, more than 66⅔ percent of the Highway Trust Fund allocation is appropriated.

We have infrastructure that white males, white females, black males, and black females, can all attest to as falling down around us, and we would like more than 66⅔ percent to put it back up.

Third, I am a white female contractor. I have been in business since 1980, and I have a contract on the Dan Ryan. On the Dan Ryan, the minority goals for employment were over 50 percent, were met by Castle Construction. Seven percent were women. We did not meet our female goals, I am sorry to say. However, we were going 40 and 50 feet up in the air on scissor lifts, and for some reason, there were a lot of females that did not want to go up there. Myself being one of them.

I have been certified by the Illinois Department of Transportation since 1981. I have attached an appendix to my testimony which certifies that as of October 1984, had there not been a WBE program, I would not have been awarded one single contract.

Since February 1987, when IDOT found out from the Federal Government that women could not be considered a separate and distinct entity, other than the Dan Ryan, I have only received two other small subcontracts with the Illinois Department of Transportation.

I am pleased that you are allowing me to do something other than read my testimony because as a former teacher, I can talk for 45 minutes on anything.

In 1984, the State of Illinois passed legislation for all government procurement of State agencies, including the Department of Transportation, that set aside 5 percent for minorities and 5 percent for females.

I requested by registered letter of the Secretary of the Department of Transportation in February 1988 whether or not the State was going to follow on State-funded projects that 5 and 5 goal. I have yet to hear from the Secretary of the Department of Transportation about that.

I served as a member of the White House Conference on Small Business, and we came up with six recommendations for prompt pay. I am pleased as punch that one of the recommendations may somehow some day become law.

You also should be aware that the State of Illinois in their wisdom passed a Prompt Pay Act, which the city of Chicago is supposed to be following, but for some absurd reason, the city of Chicago just denies that they are under the Prompt Pay law of the State of Illinois.

The State of Illinois, like Congress is wont to do, has specifically excluded itself from the Prompt Pay law. So, I am glad maybe you guys will tell them they should pay us a little more promptly.

Presently, just as an aside, in the city of Chicago, I am owed about $250,000 for 1986 that they refuse to even meet with me to discuss.

Also, in the White House Conference on Small Business, six recommendations were made in terms of equal access to commercial credit. I stand before you as a victim of the equal access to commercial credit.

I also happen to serve on the Federal Reserve Board Advisory Council on Small Business for this region, and every single meeting, I have asked why the Federal Reserve Board in their ultimate wisdom and with a Lotus or whatever spread sheet they want to use, they cannot come up with zip code tracking, minority business loans, women business loans.

It seems to me that any contractor in this room, whether they are white or black, male or female, would pay their bills a hell of a lot faster than Argentina, and it seems to me that a large bank, a downtown bank, could do well to put some of their money where their mouth sometimes is.

I should not get off on banks because I would be here—well, you would kick me off, actually.

Someone brought up the question of resident engineers and discrimination. The city of Chicago has a group of resident engineers that defies description. I had the wonderful occasion to deal with a resident engineer on a particular job that is still not closed out 3 years later, who would not talk to me on the phone, would not shake hands with me, would not speak to me when I spoke to him because his religious preference forbade it.

Now, if you have got someone like that representing a governmental agency, and you are sitting out there with equipment, and men and women, and God knows what else, you have a real problem, gentlemen. That, I do not think can be congressionally mandated, however.

Just in conclusion, I think this program can work. I have said this before to any number of agencies. If it is administered fairly, if the certification is extensive, if there is contract monitoring, and if there is possibly a penalty for lying.

I would also suggest that possibly Congress might think in terms, since contractors like to do this, in terms of incentive pay and liquidated damages. In other words, if they use 10 percent, if they use 10 percent minority and 5 percent women, and I am very much in favor of separate goals, if they use 11 percent minority and 6 percent female, they get some kind of an incentive.

But, lo and behold, if they come in at 3 percent minority and .6 percent WBE, they ought to get a liquidated damage just like they get liquidated damages for not finishing the job on time.

I suppose I have gone over my time, but I am so glad I did not have to read this testimony. It was really dull.

Thank you.

[Ms. Meyer's statement, with attachments, may be found in the appendix.]

Chairman Skelton. Thank you, but you have been very interesting.

Jacqueline Bradley.

TESTIMONY OF JACQUELINE L. BRADLEY, PRESIDENT, DIRECTIONS METROPOLITAN, INC.

Ms. Bradley. Good afternoon, Chairman Skelton.

Can you hear me?

Chairman Skelton. Yes.

Ms. Bradley. And honorable members of the subcommittee.

I have prepared written testimony which——

Chairman Skelton. It will be entered in the record. Thank you.

Ms. Bradley. Thank you.

So, at this time, I would like to summarize some of those points made in that written testimony.

As president of Directions Metropolitan, a 100-percent minority female-owned firm in the Chicago area, I am pleased to say that since 1982, our firm is the product of the disadvantaged business legislation.

This legislation has contributed to the growth and development of Directions and is primarily responsible for where we are today.

As such, I would like to say that we support federally mandated set-asides, and that these set-asides should be increased.

Set-asides in this respect, however, I am understanding to mean a program which earmarks transportation dollars to be set aside in a special market where bidding will be by disadvantaged businesses or women-owned businesses only. The competition to be between those businesses.

If this is the type of program that you are referring to in this legislation, then I believe that this program will do more to utilize DBE and WBE contractors.

The ultimate effect of a set-aside program would be to develop DBE and WBE prime contractors and increase the total impact of the disadvantaged business legislation because those contractors would also presumably employ minorities and females as well as utilize WBE and DBE subcontractors.

Additionally, on the second issue that we have identified, I would like to say that we feel that existing law would best be served if the two-goal system would be reinstituted. The two-goal system serves to increase the total participation of socially and economically disadvantaged groups in national transportation projects.

Maintenance of a separate overall contract goal for women business enterprises reemphasizes the WBE program and mandates specific attention and resources be devoted to ensure the success of these programs.

To lump WBE and DBE together in one category with one goal will prove detrimental to WBE's in the long run. We feel that the single goal has already had a negative effect on the participation of minority and women business enterprises. It has resulted in an actual decrease in the goal for participation by disadvantaged businesses. It has gone from 12 percent total to 10.

It has reduced the number of socially and economically disadvantaged firms participating in the program. We feel that a review of the number of firms that are enjoying the benefits under the single goal will prove this out.

It has reduced the participation of female-owned firms which are not male dominated, and it has created an unhealthy competition between minorities and women.

It goes without saying that a congressional mandate is needed to ensure the participation of DBE's and WBE's in highway construction spending. The dramatic increase in the percentage of dollars spent with DBE firms since the enactment of section 105(f) is plain to see that the 10-percent goal is perceived as a ceiling of participation by the industry and not as a floor, as prescribed by the legislation.

The fact of the matter is that the opportunity is now limited to 10-percent participation and women must now compete against male DBE's to achieve any participation at all, and this is not helpful or healthy to the continued growth of women business owners.

Singleizing the goal is the first step to eliminating the WBE program.

I would also like to add some additional comments to the written testimony that has been submitted, and first to tell you that the testimony as submitted is supported by the Alliance of Minority and Women Associations, which was mentioned earlier.

In addition to this, however, I think that it is important to stress that some of the other testimonies have brought out additional needs of disadvantaged businesses and women-owned businesses.

These needs go from bonding, to financing, to training. They are all very important, but it is also understood that the present legislation does not provide answers or solutions to those problems.

For the past 3 years, we have been fighting to establish a definition of who should be included in the program. We have been fighting to determine how to count participation. We have done little to answer the problems that really exist.

Procurement is one problem, and the legislation addresses that. However, there are other interrelated business problems that the legislation has not addressed, and we support the testimony made today which would develop legislation to address problems facing disadvantaged businesses and women-owned businesses in the construction industry.

I must say that reducing the barriers facing these firms is a challenge. That is understood. It is a challenge that may at times seem to be in conflict with the transportation goals. However, it is not a challenge that we need to back away from.

We spend so much time doing battle. We have very little time to do business. If we are to be successful business people, we need to spend more time doing business.

Chairman SKELTON. That is the sad end of it, is it not?

Ms. BRADLEY. That is the sad end.

I need to be at work today, but it is very important that I am here.

[Ms. Bradley's statement may be found in the appendix.]

Chairman SKELTON. Thank you.

Marjorie Herter.

TESTIMONY OF MARJORIE L. HERTER, NATIONAL PRESIDENT, WOMEN CONSTRUCTION OWNERS & EXECUTIVES, USA, AND PRESIDENT, VEE SEE CONSTRUCTION CO., INC.

Ms. HERTER. I am president of Vee See Construction Co., which, however, does not do transportation work, but I am here as the national president of Women Construction Owners and Executives, USA, and that is who I am testifying on behalf of. Our members are in 24 States and do transportation work.

I would like to clarify. There was previous testimony provided by Simone Kapovich of the Illinois Association of Women Contractors and Entrepreneurs which I believe incorrectly stated a position taken by the Women Construction Owners and Executives.

On page 8, there was a position statement from the May 1987 position paper of Women Construction Owners and Executives which prior testimony was to have incorrectly placed WCOE as supporting a one-goal system. This is incorrect.

Since its inception, Women Construction Owners and Executives has supported a two-goal system. It was only after the Congress combined the two goals into one goal that our position was since you took the two goals and put them into one, let us raise the goal numerically.

So, I believe that testimony might have been misstated on our behalf.

That legislation which combined both the goals for minority business enterprises and women business enterprises has had both a positive and a negative effect to women in the construction industry.

First, it has allowed women opportunities to bid on projects and to have access to other programs, such as the short-term lending program and the bonding program, as well as some other programs in technical assistance that is available to the disadvantaged business enterprise.

So, classification of women as disadvantaged has been of assistance to women contractors.

On the other hand, combined goals has led to a severe infighting between minorities and women for that 10 percent of the contracting opportunities. Prior to the Surface Transportation Act, minorities were given 10-percent participation goals and women had the administratively-set 3.2 percent goal.

The combined goals have led to massive minority participation to the exclusion of women in some areas of the country, and in others, as here in Chicago, it has had the opposite effect.

In California, the combined goals have had a detrimental effect on women contractors. On the other hand, we have heard testimony that a lion's share of the goal has gone to women contractors here in Chicago. The only solution to this dilemma is the two-goal system.

Separate goals for women business enterprises and separate goals for the minority business enterprises.

Chairman SKELTON. At that point, does your organization have a recommendation——

Ms. HERTER. Yes, sir; we do. We suggest that the minority participation be not less than 10 percent and the women participation be not less than 5 percent.

The other problem that we encounter, and it has been brought up before today, is the certification process for verifying WBE and MBE status needs to be simplified, uniform, while still protecting from fronts.

Women Construction Owners and Executives vehemently opposes both WBE and DBE fronts, and we define a front as a business which is essentially controlled by a man either directly or indirectly when the woman is not making the day-to-day business decisions.

WCOE does not object to the woman with limited business experiences attempting to establish her own business. She may seek the assistance of male field superintendents for various crafts as long as she is the driving force within that business.

Unfortunately, too many businesses are becoming fronts because of the opportunities for WBE's to bid on large projects. WCOE seeks an enforcement mechanism and procedure to eliminate fronts and to penalize those individuals who have established such fronts.

The Department of Transportation has established a toll free number where callers can anonymously report fronts, and we would suggest that this be publicized more.

In addition, we seek a penalty for those contractors that set up and encourage fronts. We would support legislation that would effectively ban a contractor from bidding any public works project for 3 years if he were found to have established or be the moving force behind a WBE front.

The purpose of the WBE program is to provide opportunities for women contractors to gain experience and place themselves in the mainstream. By allowing fronts to exist, thereby taking these contracts away from legitimate WBE's, the entire purpose of the program is defeated.

The Department of Transportation must be commended for its basically thorough, although repetitive certification process. There are other agencies who have a self-certification-type of process, and it only encourages the establishment of fronts and hurts legitimate WBE contractors.

Included in my testimony today is criteria for certification which we would like you to consider as well as a certification and review process that would involve onsite verification and address some of the other issues that we talked about earlier today.

Finally, bonding is always difficult for a small contractor, but it is virtually impossible for so many women and minority contractors.

Chairman SKELTON. Let me interrupt you at that point again. Would you say that bonding is more difficult for women or more difficult for black enterprises?

Ms. HERTER. I do not have that information on that, sir.

Chairman SKELTON. Excuse me. Go ahead and finish.

Ms. HERTER. Discrimination against women and minorities in the bonding market is quite prevalent. In the past, the Department of Transportation has provided special bonding programs for subcontractors on major freeway and airport construction projects.

This type of bonding program needs to be available on more construction projects. Without an established track record, women and minority contractors cannot get the bonding in the private sector. The establishment of a bonding program at a reduced cost to minority and women contractors will help establish that track record and quickly assimilate women and minority contractors into the private sector.

After all, assimilating women and minority contractors into the mainstream of the construction industry is the ultimate goal of the special procurement programs.

[Ms. Herter's statement may be found in the appendix.]

Chairman SKELTON. Thank you so much.

Mr. Glendis Hambrick, please.

TESTIMONY OF GLENDIS HAMBRICK, CHICAGO CHAPTER OF THE COALITION OF BLACK TRADE UNIONISTS

Mr. HAMBRICK. Mr. Chairman, on behalf of the Chicago Chapter of the Coalition of Black Trade Unionists, [CBTU] I thank the Small Business Committee and this subcommittee for the privilege and opportunity to provide testimony on barriers to contracting facing small disadvantaged business enterprises here in Illinois and, of course, on a national scale.

Before beginning this substantive portion of testimony, I would provide some pertinent background information on our organization.

The Coalition of Black Trade Unionists was founded in 1972 for the purposes of achieving economic, political, and social justice by maximizing black participation in leadership positions in the labor movement, and through active involvement in programs designed to improve employment opportunities as well as conditions of employment for minority and poor workers.

Today, the Chicago Chapter of CBTU has grown and expanded and is now composed of representatives from more than 40 national and international unions. Our objectives are reflected in activities and projects which include work within the framework of the trade union movement, to provide a voice and avenue for greater black and minority participation in leadership as well as rank and file, conducting voter registration and education drives, campaigns for organizing and unorganizing, and active support for civil rights legislation and public policies designed to end discrimination in all forms.

In summary, CBTU is an advocate for the uninhibited participation of members of the minority community in the social, cultural, political, economic, and commercial life of society.

This hearing, which was prompted by the exclusion of MBE's from the Dan Ryan Expressway repair project, is critical because it raises crucial issues. These are issues which question our Nation's willingness to keep promises memorialized in its Constitution, reinforced by civil rights laws and validated in numerous court decisions.

These are issues which certainly raise the specter of a backward leap into the time of racism and discrimination, unfettered by either moral principles, legislative prohibitions, or judicial precedent.

These are concerns, Mr. Chairman, which begin to shape a resolution of whether America intends to retreat to the dark ages or march into the next century free of the stigma of being hypocritical because of the treatment of its minority groups of citizens.

Throughout the tenure of my national administration, we have witnessed deviation after deviation from our Nation's declared policy of ending discrimination and promoting affirmative action in order to correct the historic disabilities imposed upon blacks and other minorities.

The end result of failure to effectively enforce the laws against discrimination, whether in housing, education, employment, and procurement, has created a sense of reversal and abandonment in minority communities, confirmed by all major socioeconomic indicators.

There are growing differentials in black and white median incomes. Black youth unemployment has been in double digits and still, in spite of claims of economic recovery, is in double digits. Black business failures surpassed. Plant closings and relocations are further distressing already-impoverished communities.

Increased numbers of foreclosures are occurring because homeowners are unable to make mortgage payments for lack of income. This steady decline in the standard of living and quality of life for individuals and families in minority communities requires congressional attention. A good place to begin is with the minority business community.

Like most small firms, minority businesses are undercapitalized. Those in the service sector are particularly handicapped because they are unable to post the large buildings and heavy equipment lending institutions require as collateral. Minority businesses must also contend with the racist notion prevalent in the lending industry that they are a greater risk because they are more likely to default on loan obligations.

These capitalization problems must be solved by concrete congressional action. Minority businesses need skilled managers and a work force that can read, write, and perform on the job. This presents the need to eliminate the deficiencies in our public school system and adequate funding for education.

Minority businesses need broader markets. Too often, they are confined to minority markets. Not because they offer inferior products, poor services, but because of exclusion from other market opportunities on account of racism.

This is true in the private as well as government sector as illustrated by the State of Illinois' practices on the Dan Ryan project. The Dan Ryan Expressway repair project is a case of clear vulgarization of congressional intent in order to dilute and make a mockery out of the 10-percent set-aside requirement.

State officials from the Governor of Illinois to the Illinois Department of Transportation have decided on the basis of political expediency that it is practically safe to discriminate against MBE's in favor of white female businesses.

The effect of the State's actions on the Dan Ryan was to enlarge the portion of dollars and contracts filed flowing into the white community. It is inequitable to set aside 90 percent for white males and then require white female-owned businesses to share in the 10-percent set-aside for blacks, Hispanics, Native Americans, Indians, Asians, and Pacific Islanders, Alaska Natives, and all others designated as small disadvantaged businesses.

When the 1987 amendments to the Surface Transportation Uniform Relocation Assistance Act included WBE's as a presumptive member of the DBE class, Congress created the conditions for destroying the only remedy which can correct inequities.

Some Members of Congress genuinely believe that the alteration of the language in the law did not extinguish its spirit and that States would fairly administer the 10-percent set-aside for highway construction projects using Federal funds.

The State of Illinois chose to act in bad faith. State officials throughout their negotiations with DRIVE Coalition and even today maintain that a waiver is needed from the U.S. Secretary of Transportation in order to increase the MBE share on the Dan Ryan project.

This defies common sense in light of the fact that no waiver was required in order to give white female businesses the lion's share of the contracts. This argument can only be sustained if Congress intended to give white female businesses preferential treatment as a member of the DBE class.

This is not substantiated by the legislative language or——

Chairman SKELTON. Mr. Hambrick, can you summarize for us, sir? You have exceeded your time.

Mr. HAMBRICK. Yes.

In summary, the CBTU, Chicago chapter, offers the following recommendations for considering more forceful and effective measures as the framework for removing current barriers to minority businesses.

1. Congress must use its awesome power to tax on appropriate funds to further broaden societal objectives.

The privilege of using public funds must be extended only to public and private institutions which are not formally pledged to a policy of nondiscrimination but are constantly monitored to ensure that they are, in fact, practicing fulfilling the goals of equality of opportunity.

2. Congress must impose a condition of priority of view upon States applying for Federal funds to ensure that such funds will be applied in a nondiscriminatory manner that will further nondiscriminatory ends.

They should be made to develop plans for spending Federal dollars with input from community-based organizations—labor, educational institutions, and local government units.

Details should be required that would include a statement of economic impact.

Training opportunities. Jobs to be provided. Utilization of minority businesses and labor forces and such other information as would ensure Congress that there would be a nondiscriminatory use of Federal funds.

No funds should be awarded without a signoff by all parties, both public and private, as described above.

Congress must consider whether it has the power to nullify the charter of any business association, thereby withdrawing the privilege of doing business once there is evidence of continuing violations of the law and discrimination. The same should be true for other institutions which engage in discrimination.

A State-by-State review of procurement programs must be undertaken by Congress.

We conclude further by stating that small businesses have a vital role to play in bettering the quality of life for citizens. Strengthening their ability to be viable and productive requires that Congress take immediate corrective actions based upon a new outlook on the problems of historic and continued inequities in our society.

Fairness and economic justice for minority businesses will only be achieved when Congress acts decisively to remove the vestiges and effects of race discrimination from all facets of our society.

I thank you, Mr. Chairman.

Chairman SKELTON. Thank you, Mr. Hambrick.

Questions? Mr. Hayes.

Mr. HAYES. I do not have any questions in the interest of time.

Chairman SKELTON. Thank you.

Mr. Lancaster.

Mr. LANCASTER. No questions, Mr. Chairman.

Chairman SKELTON. The gentleman from Illinois, we welcome him. Mr. Savage, a member of this subcommittee, for questions at this time.

Mr. SAVAGE. No questions.

Chairman SKELTON. Thank you so much. We do appreciate your written testimony, as well as your verbal testimony. You have been very, very helpful in making an excellent record, and we thank you for your attention.

At this time, the gentleman from Illinois, a member of this subcommittee, and a distinguished gentleman from the Chicago area, Mr. Gus Savage, has asked to be a witness, which we, of course, look forward to.

Mr. Savage, we recognize you at this time, sir. Do we have a copy of your written testimony?

I might also mention that the gentleman before us is a subcommittee chairman on the Public Works Committee, which I know has interest in this subject. So, you are wearing two hats today, Mr. Savage.

We appreciate your being with us. You may proceed.

TESTIMONY OF HON. GUS SAVAGE, CHAIRMAN, SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, U.S. HOUSE OF REPRESENTATIVES

Mr. SAVAGE. Mr. Chairman, members of this subcommittee, my colleagues, I hope to provide you with written copies of this testimony before you adjourn.

I also want to thank you for considering the magnitude of my schedule when in the district and my lack of control over that schedule.

Now, I appear before you today as the senior black member of the Small Business Committee as well as of the Public Works and Transportation Committee of the House of Representatives.

In addition, I am chairman of the Minority Business Development Brain Trust of the Congressional Black Caucus.

Also, I am the sponsor, as you know, of the largest legislatively mandated set-aside of Government procurement for businesses and institutions owned and controlled by disadvantaged minorities in the history of our Nation. That is, section 1207 of Public Law 99-661, the Defense Department Authorization Bill of 1986.

The U.S. Government is the largest purchaser of goods and services in the world, spending approximately $177 billion annually and the Defense Department accounts for 80 percent of these expenditures.

The administration of President Ronald Reagan has dragged its feet in executing this precise and clearly written 3-year pilot program that could mean some $25 billion for disadvantaged minority enterprises and institutions.

Of course, disrespect for the law is not new for that administration. That administration violated legislative restrictions on arms sales to foreign nations and military assistance for the Contra revolutionaries in Nicaragua as revealed by the recent hearings conducted by a joint congressional select committee into the clandestine operations known as Irangate, for which Colonel Oliver North and others are presently on trial.

Now, just as the Republican Reagan administration has failed to fairly execute the Defense Department set-aside in this State of Illinois, the Republican administration of Governor James Thompson has failed to fairly execute the Transportation Department set-aside.

He has taken advantage of a misguided amendment in the Surface Transportation and Relocation Assistance Act of 1987, pressed upon by Congress by the ranking Republican member of the Public Works and Transportation Committee of the U.S. House of Representatives, John Hammerschmidt, to deny fair participation of disadvantaged business enterprises in the federally financed rehabilitation of the Dan Ryan Expressway here in Chicago.

Moreover, in distorting the execution of this amendment, Governor Thompson has received crucial support from the ignorance and arrogance of white commentators and reporters of the white racist local daily newspapers and television stations.

Indeed, Chicago Tribune columnist Mike Ward and Channel 7 Television commentator Alex Sieth turned the facts upside down and inside out in the tradition of Attorney General Meese. Not to criticize Governor Thompson, but, rather, to blame me and others for his twisting of Federal law, despite my publicly and repeatedly stated opposition to what the Hammerschmidt resolution permitted and Governor Thompson exploited.

Furthermore, I do not believe that it was merely coincidental that the blame was misplaced just before the last primary election in which I faced substantial opposition.

I have explained my opposition in the Public Works and Transportation Committee, in the Congressional Black Caucus' annual legislative weekend workshops, in public speeches, and on my weekly radio commentary over the popular FM radio station WBMX every Sunday morning at 10 a.m.

I have continually explained it before Hammerschmidt and Thompson committed their wrongful deeds, while they did it, and since they have done it.

However, in Chicago, as in the case of *Plessey* v. *Ferguson*, almost 100 years ago, a black spokesman has no right to truthful reporting of fair commentary that any white journalist has to respect.

Now, let me once more explain the specific problem which concerns this subcommittee. Its history parallels the consequences. It is simply this: Because of historically and often legally imposed disadvantages, it has been deemed by the U.S. Congress and the U.S. Supreme Court that certain minorities, mainly blacks and Hispanics, have been denied equal opportunity for employment, promotions, and contracts by Government and private business.

Present evidence of these disadvantages are found in the following sampling of statistics. For 1987, and they have changed very little since then, the unemployment rate for white males and females was only about 5.3 percent, but for Hispanics, it was 8.8 percent and for blacks, it was 13 percent, 2½ times as high as for whites.

In 1986, 27.3 percent of Hispanics and 31.1 percent of blacks suffered incomes below the poverty level, nearly 3 times the rate for whites. For every dollar of median white family income, Hispanic families received only 65 cents and black families only 57 cents.

Now, because of these disadvantages, in the late 1960's, Congress began passing laws requiring a fairer share of jobs, promotions, and contracts for disadvantaged minorities. In 1982, Congress adopted a bill to substantially supplement funds for highway construction and rehabilitation over a 3-year period as a means of reducing unemployment.

Now, this highway bill for the first time set aside 10 percent of the procurement funds it authorized for States to be spent with businesses owned and controlled by disadvantaged minorities, known as DBE's. As provided in the Small Business Act, of course, blacks and Hispanics were among the five minority groups presumed to be disadvantaged.

However, as you know, white women were not. This provision was proposed by the former chairman of the Small Business Committee Parren Mitchell and guided through the Public Works and Transportation Committee by me, the only black member of that committee at that time.

The issue of including businesses owned by white women, known as WBE's, in this set-aside even then arose informally in the committee's deliberations, but with the support of the chair of the Women's Caucus in Congress, then Patricia Schroeder, we were able to restrict the set-aside to disadvantaged minorities.

However, U.S. Secretary of Transportation Elizabeth Dole, as you know, subsequently added a 3.2 percent set-aside for women to the program administratively.

Consequently, DBE participation in highway contracts rose from 3 percent in 1980 to 13.6 percent in 1984, and WBE participation rose from .06 percent in 1980 to 3.1 percent in 1984, and both categories remained close to these highs through 1987.

Then came the Surface Transportation and Uniform Relocation Assistance Act of 1987, which concerns us today. Public Law 100–17 was adopted April 2 of last year. In that act, section 106(c), paragraph 2(b), entitled, "Definitions of Disadvantaged Business Enterprises," states that:

> The term socially and economically disadvantaged individuals has the meaning such term as under section 8(d) of the Small Business Act, except that women shall be presumed to be socially and economically disadvantaged individuals for the purposes of this subsection.

Of course, this reference to women could only mean white women because blacks, Hispanics, and other women of disadvantaged minorities were already included and are included in the definition contained in section 8(d) of the Small Business Act.

In other words, this effectively reduced by one-third the amount for disadvantaged minorities by collapsing the previously 3.2 percent set-aside for white women into the traditional 10-percent set-aside for disadvantaged minorities.

Even worse than this, Governor Thompson took advantage of this opportunity to meet Federal set-aside goals without fair regard for disadvantaged minority businesses in Illinois. $82 million of Federal funds were contracted with big white male-owned firms under this law to repair the Dan Ryan Expressway in Chicago. $30 million went to Madden Construction Co. and $52 million went to Walsh Construction Co., and of this amount, $12.7 million or 15.5 percent was subcontracted to meet the Federal and State set-aside requirements.

You see, the State of Illinois also has a 15-percent set-aside goal for transportation projects, 50 percent higher than the Federal goal of 10 percent.

Now, the Federal law does not specify what percentage of the total set-aside should go to white women-owned businesses, and its goal is a floor rather than a ceiling.

In other words, Thompson could have awarded the traditional 10 percent or $8.2 million of the $82 million to businesses owned by blacks and Hispanics and still awarded 5 percent or $4.2 million to businesses owned by white women or even awarded more than this to both groups.

Instead, businesses allegedly owned by white women received 71 percent or $9 million of the $12.7 million in subcontracts. Hispanics received only 20 percent or $2.6 million and blacks were left with a mere .09 percent or $1.1 million.

For white women, that translates into 11 percent of the total of $82 million in Federal funds allocated for Dan Ryan repairs. For Hispanics, only 3 percent, and for blacks, less than 1½ percent.

No other State permitted such a distorted outcome, though governed by the same law.

Now, let me explain how this provision of which the Governor of Illinois took advantage and abused, how this provision came about to start with.

In 1986, Parren Mitchell proposed an additional 10-percent set-aside for disadvantaged minorities when the Public Works and Transportation Committee of the House first considered the bill.

Chairman SKELTON. Excuse me. We should point out that Parren Mitchell is a former chairman of the Small Business Full Committee and now has retired a little over a year ago, is that not correct?

Mr. SAVAGE. And a great champion of set-asides.

Chairman SKELTON. Yes.

Mr. SAVAGE. Now, as a member of that committee, I helped him win approval for the proposal. However, when the committee's bill was considered by the full House on August 6, 1986, the committee's ranking Republican member, Mr. John Hammerschmidt, proposed the amendment to include white women in the bill's set-aside provision.

Congressman Glenn Anderson, Democrat of California, was in charge of the bill's debate as chairman of the committee's Subcommittee on Surface Transportation. After checking with Mitchell, who acquiesced, Anderson accepted the Hammerschmidt amendment without debate and by unrecorded voice vote.

Mitchell's explanation to me personally of his acquiescence was that, first of all, we did not have the votes to both defeat Hammerschmidt's amendment and retain the set-aside. That is, he felt it was better for blacks and Hispanics to participate with white women in a 10-percent set-aside than to have no set-aside at all.

Second, Mitchell argued that acceptance of Hammerschmidt's amendment was a condition of securing passage of the bill by the then Republican-controlled Senate, and subsequently winning enough Republican votes to override a threatened veto by President Reagan.

The Senate's Transportation Committee had adopted the language of Hammerschmidt's amendment in his own version of the bill the day before. Reagan had vowed to veto either version of the bill because he considered that it authorized too much money for highway rehabilitation, too much subsidies and grants for mass transit systems, such as our own Chicago Transit Authority, to keep down fares, and too much to relocate people forced from their homes by transportation projects.

Now, that is, except for Hammerschmidt's modification, it was a very good bill, too good for President Reagan. Therefore, along with all other members of the Congressional Black Caucus and white liberals, I had no choice but to vote for the overall measure though I never favored the Hammerschmidt amendment.

Nonetheless, the House and Senate conferees were unable to reconcile differences in the highway speed limits contained in their two versions of the bill that year and, therefore, in 1986, the bill failed to win necessary final passage by both the House and the Senate of a reconciled version.

Early last year, 1987, the same bill was again proposed, was resurrected, in the House, without being reconsidered, however, by committee. Thus, the Hammerschmidt amendment was never considered or voted on in committee or ever debated on the floor of the Full House.

This time, the bill passed. Both the House, and the Senate, and Reagan vetoed it as threatened the year before. Yet, as Mitchell and Anderson had calculated, there was enough support of Republican congressmen to override the veto and the bill became law.

Almost immediately, I began pressing Chairman Anderson, who became chairman of the Full Public Works and Transportation Committee this year, due to the death of its past chairman, James Howard, pressing him and persuading other committee members to return to the future, to take white women out of the 10-percent set-aside.

I got the concerned and courageous Reverend Willie Barrow, national director of Operation PUSH, to testify for this change before a meeting of the Congressional Black Caucus' Minority Business Development Brain Trust in Washington, DC.

I solicited written support for my position from the Association of White Women Contractors, the National Organization of Women, and Congresswoman Mary Rose Oakar, current leader of the Women's Caucus.

The comprehensive series of six hearings, in fact, held by the Full Small Business Committee in April and May of this year on the problems of women and business received abundant testimony supporting my position.

As a result, I have pending in the Public Works and Transportation Committee of the House an amendment to this effect, which is likely to pass to the House floor next month. It has been delayed due to the serious illness of our chairman, Glenn Anderson, of course, who is now back on the job.

I ask you now, Mr. Chairman Skelton, and other members at this hearing, to support my amendment on the floor when it comes.

Now, what is my position? Because some minorities were starving on the mere crumbs permitted them from the table where white folks eat, Congress began legislating that at least 10 percent of the pie had to be set aside to keep these disadvantaged minorities alive, although they constitute 20 to 25 percent of the total population of these United States.

Naturally, this would not make this needy percent as strong and as healthy as the white 75 to 80 percent, which feasts on 90 percent of the pie, but it would keep the minorities alive to seek a fairer share in the future.

Then, it was noticed that the females of the greedy white majority were not as strong and healthy as its males. The logical and proper measure would have been to ensure that white females receive a fair proportion of the 90 percent held by whites.

However, this white racist male-dominated society decided instead to have their women make up at the expense of blacks, and Hispanics, and other disadvantaged minorities. Well, Mr. Chairman, I say let white females eat out of their own plate or the plates of white males. After all, there is much more in 90 percent than there is in 10.

Furthermore, this would allow women and minorities to unite rather than to provoke destructive competition between us, which I suspect has been the intention of it all to begin with.

In conclusion, let me just make two quick points.

Number 1. The presumption of disadvantage contained in the Small Business Act, restricted to minorities not including white women, is not affected by the Hammerschmidt amendment. That amendment is expressly restricted in its effect to the current Surface Transportation Act.

Hence, it is not the Small Business Committee that needs to act, but, rather, the Public Works and Transportation Committee. The proposed amendment, for instance, of our colleague and fellow committee member, Congressman John Conyers, that would have unintentionally sanctioned the inclusion of white women in minority set-asides has been withdrawn, as you know, and after all, it was that amendment which formed the basis for this hearing, as you will recall.

Now, of course, I appreciate the airing of this problem that this subcommittee has arranged. It helps, but more important and meaningful is your support of my efforts to rescind the Hammerschmidt amendment in the Public Works Committee.

Second, and finally, this same legislative strategy that I hereby propose should apply in the only other two instances in which white women are expressly and by exception wrongly included in set-asides for disadvantaged minorities.

Those two, one put in the 1983 appropriations bill for the Agency for International Development by Congressman William Gray of Philadelphia, and the other put into the 1987 Authorization Bill for Airport Improvement by Congresswoman Cardiss Collins of Chicago——

Chairman SKELTON. What is the second one?

Mr. SAVAGE. One is the appropriations bill for the——

Chairman SKELTON. I understand that.

Mr. SAVAGE. The second is the Airport Improvement Act tha was put in a set-aside amendment that expressly included women put in by Congresswoman Cardiss Collins, my colleague from Chicago.

Both should be rescinded at the initiative of their sponsors and with our support.

Now, Mr. Chairman, I thank you for your kind attention.

[Applause.]

Chairman SKELTON. Mr. Savage, we appreciate your well-prepared and, as usual, well-delivered testimony. You gave an excellent history of this situation, which we do appreciate.

Do you have any questions?

Mr. HAYES. No; I do not have any questions. I know it is not a one-man struggle.

Chairman SKELTON. We do have, as you know, a time problem. But, do you not fear that other agencies will include women as presumptively disadvantaged like was done in the two instances that you mentioned? The AID and the Airport Improvement.

Do you fear that, sir?

Mr. SAVAGE. Absolutely, if the present precedent is permitted to stand. But I am urging as a strategy reversing the precedents that now exist which would have the effect, you see, of discouraging efforts to expand it.

Chairman SKELTON. Have you any statistics or any comparable evidence, I suppose is the best way to phrase the question, in the AID situation or the Airport Improvement situation that parallels what we have had here in the Chicago area?

Mr. SAVAGE. Well, now, in the case of the Airport——

Chairman SKELTON. Which, of course, is under the Surface Transportation Act.

Mr. SAVAGE. No. Oh, you mean the Dan Ryan?

Chairman SKELTON. Let me rephrase it so you understand it.

Do you have evidence that is comparable——

Mr. SAVAGE. No; I understand.

Chairman SKELTON [continuing]. To the problem that has been raised on the Dan Ryan——

Mr. SAVAGE. I understand.

Chairman SKELTON [continuing]. And the Surface Transportation Act in the AID law that was passed by Bill Gray and the Airport Improvement Act that was passed by Cardiss Collins?

Mr. SAVAGE. Yes; I understand you.

In the case of the Airport Improvement Act, the amendment only went in effect for fiscal year 1988. So, those figures are not yet available.

Chairman SKELTON. Then, you would not.

Mr. SAVAGE. In the case of the Agency for International Development, which preceded the Hammerschmidt amendment, the facts are abundant and available, and they show the exact same result.

Seventy percent to white women.

Chairman SKELTON. Was that a 10-percent cap on all?

Mr. SAVAGE. Well, it was a 10-percent set-aside. The same identical——

Chairman SKELTON. Same provision.

Mr. SAVAGE. Identical, in fact.

Chairman SKELTON. OK. That's my question.

Mr. SAVAGE. To the Hammerschmidt amendment. In fact, Hammerschmidt withdrew his amendment from that.

Chairman SKELTON. OK. All right. Mr. Savage, thank you so much. We hope you will be able to join us for the rest of the hearing.

Our final panel consists of Rowan Woolfolk, Al Greco, James Carroll, the Honorable Greg Baise. How do I pronounce that? Baise. All right, sir, Baise, and the Honorable Neil Hartigan. Is that correct? Did I pronounce it correctly?

What is your name, sir?

Mr. CARROLL. James Carroll.

Chairman SKELTON. So that I understand, let me go back. You are representing who? Rowan Woolfolk. Who do you represent?

Mr. **Woolfolk**. Illinois Department of Transportation.

Chairman **Skelton**. All right. Al Greco, who do you represent?

Mr. **Greco**. Illinois Department of Transportation.

Chairman **Skelton**. All right. James Carroll, who do you represent?

Mr. **Carroll**. Illinois Attorney General's Office, sir.

Chairman **Skelton**. Thank you.

Mr. **Hayes**. We will begin with you, Mr. Woolfolk.

Mr. **Woolfolk**. I do not have an opening statement. I do not have an opening statement, sir.

Mr. **Hayes**. You do not have any testimony?

Mr. **Woolfolk**. No; I will answer questions.

Mr. **Savage**. Mr. Greco.

Mr. **Greco**. Mr. Chairman, we have submitted written testimony that you are more than willing to read, and we will answer any question. We have no opening statement.

[Mr. Baise's statement of the Illinois Department of Transportation, with attachments, may be found in the appendix.]

Mr. **Hayes**. Mr. Carroll.

TESTIMONY OF JAMES R. CARROLL, DIRECTOR, GOVERNMENT REPRESENTATION, REPRESENTING HON. NEIL HARTIGAN, ATTORNEY GENERAL, STATE OF ILLINOIS

Mr. **Carroll**. Yes, sir.

Good morning, Mr. Chairman, and members of the committee.

On behalf of Attorney General Hartigan, I would like to thank you for the opportunity to address this committee today.

My name is James Carroll. I am the director of Government Representation for the Office of the Illinois Attorney General.

Some months ago, when the awarding of the contracts for the reconstruction of the Dan Ryan came into question, Attorney General Hartigan asked that I direct an investigation into the Dan Ryan project, concentrating in the area of award of contracts to disadvantaged business enterprises, including both women and minority companies.

As you can well imagine, the scope of such a wide-ranging investigation was time-consuming and will necessarily continue for months to come. However, since that time, I can report to you that a team of attorneys and investigators from our office have inspected files containing literally upwards of 100,000 documents maintained by the Illinois Department of Transportation relative to the Dan Ryan.

In addition, we have met with minority business association representatives in an attempt to develop concrete information concerning evidence of illegal activity of any sham or front DBE's who are acting as subcontractors on the Dan Ryan project.

Today, I would like to renew that request for anyone with further concrete information relative to illegal activity by any DBE to please contact the Office of the Illinois Attorney General.

Since we are a law enforcement agency and our investigation is ongoing, it would not be appropriate to comment about the status of our investigation that is pending. But I can assure you that we will take appropriate legal action at the conclusion as we did relative to our investigation of the McCormick Place contracts.

I can tell you, however, from the information that we have developed, we are now focusing our investigation on a number of DBE's which now merit further strict scrutiny.

Our investigation in the Dan Ryan continues at this time and will evolve as a result of the information we have developed here and in other areas currently under investigation are expanded.

In addition to the Dan Ryan investigation, as I alluded to above, we recently filed a lawsuit against a number of majority contractors and DBE's concerning construction of the McCormick Place Annex in Chicago, where we found concrete evidence of sham and front DBE's doing business in Illinois.

We are in that case attempting to bar any company, both majority and minority, from doing further business with the State of Illinois.

The investigation into the construction of the McCormick Place has now been expanded and further litigation, including civil and possibly criminal prosecution, can be expected.

Since January 1, 1986, when the Illinois legislature passed Public Act 84-194, which is now codified as chapter 38 section 33-C, hundreds of companies have applied for and been denied certification and recertification by the Illinois Department of Transportation.

However, it was only recently that we were requested to render an opinion as to who had the authority to enforce those statutes with reference to the Illinois Department of Transportation's Federal certification procedures.

We have now determined that the attorney general has authority to enforce, by means of the State's criminal statute I referred to above, the activity of the Illinois DBE's certified by IDOT pursuant to both Illinois and Federal certification regulations.

The Office of the Attorney General has the expertise and stands prepared to conduct those investigations if necessary resources are provided.

Another factor which your committee may—which is pertinent to your committee's inquiry is the case of *City of Richmond* v. *J. Croson and Company*. In that case, we have filed an amicus brief which is currently on appeal to the U.S. Supreme Court from the 4th Circuit Court of Appeals.

In *City of Richmond*, the Court of Appeals held that before a minority set-aside program which designated a particular percentage of business to be contracted to a DBE can be enforced, there must be a showing of a compelling interest that an agency has actively discriminated against minority contractors in this past.

This holding clearly endangers all minority set-aside programs, including Illinois', and Attorney General Hartigan along with attorneys general from other States have moved to intervene in an attempt to overturn such stringent requirements under which the DBE program can operate.

That case is currently on appeal and is set for argument in the U.S. Supreme Court on October 5 of this year.

In any event, the shortcomings of any set-aside program cannot be cured with a single investigation. It will take the support of the

U.S. Congress and all State legislatures to provide the resources to actively police these programs in the future.

Likewise, it is incumbent on the Illinois Department of Transportation to use those resources for the rigid enforcement of their certification procedures to ensure compliance with all pertinent State and Federal laws and regulations.

The Office of the Attorney General stands ready to provide any resources and assistance necessary to achieve everyone's mutual goal of providing a meaningful opportunity for all disadvantaged businesses, both minority and women enterprises, to participate equally in Illinois construction projects.

Thank you.

[Mr. Carroll's statement, with attachment, may be found in the appendix.]

Mr. HAYES. Congressman Savage.

Mr. SAVAGE. Yes. This is Mr. Carroll?

Mr. CARROLL. Yes, sir.

Mr. SAVAGE. You referred to a case that requires the showing of previous discrimination, but there is also a Federal case that adds to that. It says that in order to show that, however, you can use results rather than specific instances, and there is not a Department of Illinois State government or the Federal Government that has ever contracted anywhere close to fairly with minorities and the figures show it.

So, with no difficulty in showing the pattern of discrimination by taking the results in percentages, and you stop trying to duck and hide behind the Federal Government for it is as guilty as it can be. So, it does not provide you much shelter, but you do not need to hide behind that.

No law requires your Governor to do what he has done in this State, otherwise how could you explain that no other State has done so, and what you need is your Attorney General Hartigan to get off his you know what and get out and sue the Governor of this State, who is really the one who is wrong and guilty.

That is all. That is all I have to say, Mr. Chairman.

Mr. HAYES. We are waiting on your response. That is a serious charge.

Mr. CARROLL. The only response I have, sir, is that the Governor is a separate constitutional officer. I cannot speak for his actions. All I can tell you is that in reference to this investigation, that we are continuing and will continue investigating it and bring it to a conclusion.

Mr. HAYES. Congressman Lancaster.

Mr. LANCASTER. Mr. Carroll, you have indicated that evidence has been developed and now concrete action has been taken with regard to McCormick Place. Is that the name of it?

Mr. CARROLL. That is correct.

Mr. LANCASTER. Involving fronts?

Mr. CARROLL. That is correct.

Mr. LANCASTER. Does your investigation continue with regard to whether or not fronts were involved in the disproportionate number of women contractors and subcontractors involved in the Dan Ryan Expressway?

Mr. CARROLL. Yes; it does.

Mr. LANCASTER. And that investigation is not complete?

Mr. CARROLL. No, sir; it is not.

Mr. LANCASTER. So, it is possible that at some future date, similar findings will be made and may, in fact, bring similar action in that case?

Mr. CARROLL. That is correct. What I intended to do by that was to allude to the fact that it took us approximately 2 years of investigating a project the size of McCormick Place in order to bring it to a close with the volume obviously of documents involved and a similar type of investigation is ongoing in this investigation.

Mr. LANCASTER. Mr. Greco, testimony has been given here earlier today, and no one has known whether or not it is regulation or statute, but my guess is it is regulation, which requires that contractors either own or prelease asphalt or concrete plants before they can bid on paving contracts, and that likewise, contractors and subcontractors must either own or prelease equipment for other kinds of contracts.

First of all, is that by regulation or by statute, and, second, what possible justification can there be for that kind of requirement?

Mr. GRECO. Congressman, it is by regulation as a prequalification regulation that has been on the books for, the last time I checked it out, 42 years, and the reason behind the rule is quality of the asphalt and some of the engineering concerns.

Mr. LANCASTER. But why can a contractor not purchase concrete or asphalt as a part of the contract rather than own or prelease the——

Mr. GRECO. The rule states that they can rent, lease or own, and prior to bidding or awarding of a job, if they were to rent an asphalt plant where we could control, where the RE could control the quality of the asphalt that is being produced, we have——

Mr. LANCASTER. You can have that by the specifications for the quality of concrete or asphalt to be used in the contract. Every other State in the Union that I am aware of has that kind of quality control and does not require prerenting, preleasing, or owning of the plant.

Mr. GRECO. It is our engineering force's opinion that is something we need to do as far as quality control. Obviously, there is going to be disagreement there, but we have a product to deliver to the public.

Mr. LANCASTER. Well, I have ridden on some of your streets, and I do not know that the quality of that paving is a bit better than in North Carolina where I am from.

Mr. GRECO. I am not sure you have the same weather as we do.

[Applause.]

Mr. GRECO. I am not sure you have the same weather conditions with the thawing that we do. I am not familiar with your State, sir.

Mr. HAYES. Could I ask as a matter of order that the audience refuse from overtly showing their approval or disapproval with comments of witnesses. It is sort out of context with normal procedure.

Mr. LANCASTER. Now, Mr. Greco, as I understand it, you have to prerent or prelease this asphalt plant before you bid. What happens if you then do not get the contract?

Mr. **Greco**. I am not sure of the question. If you make arrangements prior to—before the letting?

Mr. **Lancaster**. Yes; what happens if you make those arrangements and then do not get the job?

Mr. **Greco**. I would think, and I am not an attorney, that you would make some type of agreement the rent would depend on you getting the award off the letting. I am not an engineer. So.

Mr. **Lancaster**. Are you an attorney?

Mr. **Greco**. No.

Chairman **Skelton**. May I interrupt? I had to step out. Pardon me for interrupting.

There is a State requirement to own or lease an asphalt plant, is that not correct?

Mr. **Greco**. On jobs that are over 1,200 tons of asphalt.

Chairman **Skelton**. Yes, right. Is that by State law or by some regulation?

Mr. **Greco**. Regulation, sir.

Chairman **Skelton**. Promulgated by whom?

Mr. **Greco**. It has been on the books for 42 years as a prequalification regulation.

Chairman **Skelton**. Has it not been modified in recent years?

Mr. **Greco**. It was modified in 1984.

Chairman **Skelton**. Would you be kind enough to supply that within 30 days so we may have it as part of the testimony in this committee hearing?

Mr. **Greco**. Yes, sir.

Chairman **Skelton**. Excuse me for interrupting.

Mr. **Lancaster**. Now, it is now also my understanding from previous witnesses today that you must either own or prelease equipment to be used in other contracts, is that correct?

Mr. **Woolfolk**. Sir, it depends on the nature of the job that you are bidding on. In Illinois, as I am sure there are in other States——

Mr. **Hayes**. And who you are, too.

Mr. **Woolfolk**. My name is—sir?

Mr. **Lancaster**. Go ahead.

Mr. **Hayes**. Sorry.

Mr. **Lancaster**. Go ahead.

Mr. **Woolfolk**. In order to bid on a contract, you have to be prequalified to do more than 50 percent of the work on the job, which means you have to have experience in performing that work item and equipment to do that work item.

So, when they are talking to you about having to have equipment, and they must have either a lease or own equipment to perform more than 50 percent of the job in which they are bidding as prime contractors.

Mr. **Lancaster**. Is this not a prime impediment for small business to ever get decent contracts in the State of Illinois?

Mr. **Woolfolk**. Not that I am aware of, sir, in terms of getting prime contracts. We have some people who have testified before you today who are prime contractors.

Mr. **Lancaster**. Well, subcontractors. I did not mean prime as a contractor term.

Mr. **Woolfolk**. Subcontractors?

Mr. **Lancaster**. I meant a primary or a major impediment to small businesses ever getting a decent contract.

Mr. **Greco**. The prequalification rules are only—affect prime contractors. Those that are actually bid on letting day do not affect small—the WBE's.

Mr. **Woolfolk**. It does not affect the subcontractors.

Mr. **Lancaster**. And it is not the same impediment that I mentioned with regard to concrete and asphalt plants existing here. That is, what happens if you do not get the contract after you have rented all this equipment or leased all this equipment in anticipation of the contract?

Mr. **Greco**. It is one of the requirements to be a prime contractor according to our prequalification rules that you have to meet this criteria. This criteria has been on the books for a long time. It is——

Mr. **Lancaster**. Does that make it right, Mr. Greco, just because it has been on the books for a long time?

Mr. **Greco**. Well, the only thing is driven by a quality control and the type of product that we deliver to the citizens of the State of Illinois.

Mr. **Lancaster**. No further questions, Mr. Chairman.

Chairman **Skelton**. Mr. Hayes.

Mr. **Hayes**. Thank you, Mr. Chairman.

I know all three of you gentlemen have been here throughout the hearing. You have heard testimony, pro and con, about the one-goal system versus the two-goal system.

You have also heard testimony involving the issue of the current split in regard to set-aside, 10 percent for minorities versus 90 percent in the whole program.

What is the reaction of the Illinois Department of Transportation in terms of are you for or against the retention of the current one-goal system or a return to the two-goal system?

Mr. **Greco**. In defense of the Governor, whose name was mentioned earlier, he personally went and saw the Administrator of the FHWA and asked that if we as a State could indeed operate under a two-goal system, and the answer from the Feds was absolutely not, you had to adhere to the one-goal system.

Administratively, we can operate under either way. Prior to 1987, we had two goals in this State and administered it very easily as we have no problems with administrating a one-goal system.

As far as an opinion, what is fair in that, I am not sure our positions allow us to take that kind of stance. We are here to administer the laws as the Feds require us to.

Mr. **Woolfolk**. I would like to add that the Federal Government asked for comments on its rule, and on December 21, 1987, we sent to the Docket Clerk, U.S. Department of Transportation, our comments concerning that aspect of the regulation, and we anticipated and mentioned in our correspondence to them that we anticipated a problem with the——

Chairman **Skelton**. You are holding something up. What is that, Mr. Woolfolk?

Mr. **Woolfolk**. It is a copy of the letter to the Docket Clerk.

Chairman **Skelton**. Would you like that to be made part of the record, sir?

Mr. **Woolfolk**. Certainly, sir.

Chairman **Skelton**. It is so made without objection.

Mr. **Woolfolk**. On March 9, again, in response to a letter from the Federal Highway Administration, we responded reiterating and illustrating the problems we were having with the Dan Ryan. That was sent to the Division Administrator for the Federal Highway Administration.

Chairman **Skelton**. Would you like that also to be part of the record, Mr. Woolfolk?

Mr. **Woolfolk**. Yes.

Chairman **Skelton**. Without objection, so made.

Mr. **Savage**. Would my colleague yield?

Mr. **Hayes**. I yield.

Mr. **Savage**. On this point, thank you for yielding.

He is absolutely right that—I mean, the testimony here is on target that this is for a two-goal system, and he is also correct that the Governor cannot administratively convert the one-goal system in the Federal law to a two-goal system. That is correct.

And, of course, we are all going to push it to get a two-goal system, but, meanwhile, within the one-goal system, Mr. Woolfolk, do you think that the Governor was fair in giving 71 percent of the business in Dan Ryan to white women businesses?

Mr. **Woolfolk**. Well, what I would like to do, sir, is explain to you how that process took place.

Mr. **Savage**. No; to save the time of explaining, I just want your conclusion. What I asked you, my brother, is how do you think—do you feel that was fair, that 71 percent went to white women-owned businesses? You can answer that yes or no.

Mr. **Woolfolk**. Sir, I have to explain the process. It will not take long.

Mr. **Savage**. Just tell me how you feel. Do you believe——

Chairman **Skelton**. The witness may answer yes or no, and then he has the right to explain.

Mr. **Woolfolk**. Given the set of circumstances, the Department of Transportation put a 15 percent goal on that project. The Federal regulations say the contractor may meet that goal with whatever combination of DBE's and WBE's he or she wants.

That is the situation we have on Dan Ryan.

Chairman **Skelton**. Excuse me. With that explanation, is that a yes or no? No, no; I am asking Mr. Woolfolk. You can talk when you want to.

Mr. **Woolfolk**. Given the set of circumstances, we had no option but to prove the plan that the contractors submitted using that spread of DBE and WBE firms.

Chairman **Skelton**. So, your answer is no? Is that correct?

Mr. **Woolfolk**. What is the question?

Chairman **Skelton**. Would your answer be no then to Mr. Savage's question?

Mr. **Woolfolk**. What is your question?

Mr. **Savage**. Let me restate the question. I asked you, did you think—do you think that giving 71 percent of the contracts—the set-aside contracts on the Dan Ryan to businesses owned by white women was fair?

Mr. **Woolfolk**. In administering this program, it is not important what I think. They met the guidelines.

Mr. **Savage**. You are not ashamed of what you think, are you? Are you able to express what you think?

Mr. **Hayes**. All right. I am trying to get some sense of direction. Is IDOT in favor of a change and the breakup increasing, since you had indicated you could work with, the one-goal system, the two-goal system, 10 percent and 90 percent is the current breakup now, are you in favor of expanding that 10 percent for minorities?

Mr. **Woolfolk**. We once had 3.5 percent and 10 percent. This program was a lot easier to administer with that breakup.

Mr. **Hayes**. I did not understand.

Mr. **Woolfolk**. This program was a lot easier to administer.

Mr. **Hayes**. So, you are not in favor of changing it?

Mr. **Woolfolk**. No; what I said was when we had a 3.5 percent WBE, we had a goal for WBE's and one for DBE's, it was easier to administer.

Mr. **Hayes**. So, you could stand the change if it was in the right direction?

Mr. **Woolfolk**. We will administer the program under a two-goal system.

Mr. **Savage**. Mr. Chairman, may I? Mr. Woolfolk and Mr. Greco——

Chairman **Skelton**. You are recognized.

Mr. **Savage**. Thank you, Mr. Chairman.

Are you aware of the experience in California regarding the administration of this same law, where only 20 percent of the contracts went to white women-owned firms? You are aware of that.

Now, if you are aware of that, how then can you explain one State obeying the same law and giving 80 percent to minorities and this State claiming that it had no choice but to give only 19 percent to minorities?

Does that not indicate to you that something is wrong in the way this State has administered the law? There is no higher percentage of white women in California than in Chicago—I mean, Illinois. How do you explain that difference then? Same law.

Mr. **Greco**. Do you want a comment, sir?

Chairman **Skelton**. He wants an answer.

Mr. **Savage**. Thank you, Mr. Chairman.

Mr. **Greco**. Well, I am not familiar with California's DBE program at all, but I think in answering about the Dan Ryan, that we look at it from a legal point of view.

Mr. **Savage**. No; excuse me.

Mr. **Greco**. Let me finish.

Mr. **Savage**. The California program is not California's program, it is the same Federal program under which you operate in Illinois.

Mr. **Greco**. And I would like to finish. That we looked at it once the contract was awarded to Walsh and Madden, and they met their DBE/WBE requirement, and some of the community leaders, as Reverend Barrow and some of the others came to us and said, you know, you are administering this law correctly, but there is not a lot of sensitivity here, and we as a department and from Secretary Baise on down——

Mr. SAVAGE. Just a moment. Just a moment, Mr. Greco. You referred to a person who is in this room. You repeat—you just said——

Mr. GRECO. I said——

Mr. SAVAGE [continuing]. That Reverend Barrow said you were administering it all right? Did you say that?

Mr. GRECO. I said that although we were within the legal ramifications——

Mr. SAVAGE. What did you say Reverend Barrow said?

Mr. GRECO. I said that Reverend Barrow came in and said that although it may be legal, it sure in heck is not sensitive and, therefore, we entered into negotiations with some of the community groups and tried to correct the situation, that although it was legal, it could not address the needs of that community.

Mr. SAVAGE. But the California result was also legal. So, if it was legal in California for white women to get only 20 percent, then why in Illinois do you have to give 71 percent to be legal?

Mr. GRECO. Because, as a department, we only had a legal relationship between the department and the prime contractor. We do not have a relationship with——

Mr. SAVAGE. Same as in California. The relationship is with just the prime contractor.

Mr. GRECO. All I am telling you, sir, is that is how we operate the program.

Mr. SAVAGE. Well, then, that makes how you operate kind of funny, does it not?

Mr. GRECO. I do not believe so.

Mr. SAVAGE. Well, it sure is different in its results.

Mr. GRECO. Well, our results are that we have met our goal year in and year out.

Mr. SAVAGE. Maybe the problem is not the Federal law, maybe it is you.

Mr. GRECO. It could be, sir.

Chairman SKELTON. Mr. Hayes.

Mr. HAYES. Mr. Chairman, I have one question of you.

You have heard testimony here, too, which recommended that we put some teeth in the statute which will provide penalties for people, contractors, who discriminate.

Would the attorney general's office, to your knowledge, be prepared to support legislation with teeth in it?

Mr. CARROLL. Sir, we would be prepared to support anything that would do—that would give an equitable relationship to all contractors.

Mr. HAYES. I do not know if that really satisfies me, but he does not answer the question.

Chairman SKELTON. Any further questions of this panel, Mr. Hayes?

Mr. HAYES. No; no more.

Chairman SKELTON. Mr. Lancaster.

Mr. LANCASTER. No, Mr. Chairman.

Chairman SKELTON. Mr. Savage.

Mr. SAVAGE. No.

Chairman SKELTON. Counsel, do you have any questions?

Mr. ORBAN. No.

Chairman **Skelton**. Gentlemen, thank you so much for your testimony. It has been very helpful, and we appreciate it.

Ladies and gentlemen, this does conclude this hearing. It has been most helpful and informative. This is an exercise in democracy at its best, where you do see the very difficult problems that from time to time face members of Congress, but your testimony has been most helpful.

We do appreciate your being with us and submitting your written as well as your oral testimony with our thanks and special thanks to the great city of Chicago and the mayor who was here.

We adjourn this hearing.

[Whereupon, at 2:10 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX

Opening Statement
of
Congressman Esteban E. Torres
before
the Subcommittee on
Procurement, Innovation
and Minority Enterprise Development
April 4, 1988

I want to thank Chairman Skelton for agreeing to hold this important hearing on such short notice. I requested that this hearing be held today because representatives of a number of minority and women's business organizations from California are in Washington this week to discuss the adverse impact of the Surface Transportation and Urban Relocation Assistance Act of 1986.

Since the issue of disadvantaged business set-asides was raised at last week's full Committee mark-up by my colleague John Conyers, I thought it would be useful for the Committee to hear from this group before deciding upon a course of action. California has 30 percent of all women and minority business enterprises in the country. The perspective that these individuals bring to the debate over the issue of combining women and minority business participation goals should be instructive.

In 1982, Congress mandated a ten percent minority business set-aside for contracts awarded by the Department of Transportation. Last year, Congress reauthorized the Surface Transportation and Relocation Act (STURRA), but in the process significantly changed the set-aside by including women-owned businesses as disadvantaged businesses. Moreover, the 1986 Act legislated one combined goal for both women and minority business participation. Prior to STURRA, women business enterprises had an adminstratively mandated goal of 3 percent.

We are here today to try and find out how these changes have affected procurement opportunties for women and minority businesses. While I am not certain that the data is presently available to determine the full impact of the 1986 Act upon women and minority business opportunities, the reports I have received are not favorable. In some states and localities, minority business participation in DOT projects has dramatically decreased. In others, like California, women business owners have suffered. Clearly, something must be done to alleviate these problems.

I look forward to hearing from the witnesses here today. I am confident that their testimony will help this committee fashion a workable solution to the problems that STURRA has caused in advancing the goals of increasing women and minority participation in federal procurement.

WOMEN
CONSTRUCTION OWNERS
& EXECUTIVES, USA

DEBORAH E.G. WILDER, EXECUTIVE DIRECTOR

Women Construction Owners and Executives, USA (WCOE) is a national association representing women busines owners and decision making executive in the construction industry. Founded in October 1984 with a handful of women, WCOE now has members in twenty-two states.

The Surface Transportation and Uniform Relocation Assistance Act of 1987 has impacted women owned construction companies in several ways. Prior to STURAA a minority participation goal was legislated at 10%. However, the women participation goal was only imposed administratively at 3%. Therefore, STURRA legislatively recognized women as participants under the goals program.

Secondly, in recognizing women as presumptively socially and econimically disadvantaged, it opened the door to women in the construction industry to receive additional recognition and assistance as a DBE. Women Construction Owners and Executives, USA strongly believes that women in the construction industry have been and continue to be socially and economically disadvantaged as well as systematically excluded from contracting opportunites. The construction industry continues to be dominated by white males who continue to operate through use of the "good old boys" network. Several major construction companies only allow women and minorities to bid on federally funded projects because they must meet certain federal goals. Without such goals, otherwise viable businesses are excluded from the market. Women Construction Owners and Executives seeks to have women owned businesses in the construction industry classified as presumptively disadvantaged with all agencies, including the Small Business Administration.

Finally, the Surface Transportation Act legislated one combined goal which could be met with either/or both minority and women participation. In some areas of the country where the percentage of minority contractors is lower (specifically the farm belt states and a few New England states) women have been able to receive the lion's share of these goals. In other parts of the country where there is a significant minority population, women participation has dropped to less than 1%. The overall effect of STURRA has created fierce competition and in-fighting between minorities and women. This in-fighting continues to defeat the entire philosophy behind goals.

Women Construction Owners and Executives does not seek special treatment for women contractors, rather it seeks an opportunity for women to bid and work in the same competitive market as other contractors. It is difficult enough for a new contractor to make a success of his or her bsuiness without racial and sexual barriers. What construction procuremen goals do, is eliminate those additional barriers and allow women to bid on projects and fully compete in the construction industry.

P.O. BOX 883034 • SAN FRANCISCO, CALIFORNIA 94188-3034 415/285-5411

Under STURRA, the combined goals has elimated a contractors obligation to "outreach" to women and minority firms. If a contractor can call on one firm which can meet the 10% goal,then the contractor has no further obligation. If the firm is minority owned, then women have just been totally excluded from the marketplace and visa versa. Congress saw fit to recognize both women and minorities as disadvantaged for the purpose of construction procurement when it enacted the Surface Transportation and Unifrom Relocation Assistance Act of 1987. Consistant with that recognition and its committment to both the minority and women community, Congress can only further that purpose by enacting separate goals thereby guaranteeing equal access to procurement opportunites for both groups.

Goals are set so as to maximize participation of women and minority contractors. The current goal under STURRA is a regression from the previously enacted 10% (minority) and 3% (women) goals. Women Constructio Owners and Executives seeks to have the goals raised to 10% and 5% respectively to enable minorites and women to become assimilated in the industry.

Congress will no doubt hear opposition from various factions. There are women contractors that are getting a larger share of the construction market and believe that under the current program they have an opportunity for the entire 10% and as a legitimate business decision do not want to give that opportunity up for a smaller portion of the pie. However, there are also those women contractors who recognize that the long range focus of procurement opportunities must include separate goals in order to progress. A case in point are several of the women contractors in Chicago on the Dan Ryan Freeway project. On that particular project approximately 80% of the total goal went to women contractors. Protests were filed regarding alleged women "fronts" getting the majority of the contracts. Women Construction Owners and Executives vehemently opposes fronts. WCOE defines "front" as a business which is essentially controlled either directly or indirectly by a man. The problem with the newly formed women owned businesses on that project is not a goals problem but a certification problem and Women Construction Owners and Executives would welcome the opportunity to work with Congress to see that appropriate certification requirements are adopted on a national level that would protect the legitimate women and minority contractor.

Members of Women Contrstuction Owners and Executives have also receive work on the Dan Ryan Freeway. These contractors freely admit that they have received a larger portion of the procurement goal than they normally would prior to STURRA. However, these members have still express their support of separate goals. The reason for this support is that they recognize the overall purpose of the procurement program to provide opportunties to both women and minorities; and the only way to ensure that that purpose is fulfilled and maximized is to provide for separate goals.

In order for women and minorities to maximize procurement opportunite Women Cosntructin Owners and Executives support separate goals of 10% for minorites and 5% for women.

PSM

PSM CONSULTANTS

Joann Payne

May 23, 1988

The Honorable Ike Skelton
Chairman, Subcommittee on
Procurement, Innovation and
Minority Enterprise Development
U. S. House of Representatives
2361 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Skelton,

Enclosed you will find the formal written testimony of Barbara Joann Payne. The testimony was given May 4, 1988.

If I can be of any service on this issue, please do not hesitate to call me. I thank you for the opportunity to testify and the generous actions of your staff.

Sincerely,

Joann Payne
President, PSM Consultants

JP/joo

enclosures

P.O. Box 21001 • Little Rock, AR 72212 • (501) 221-2821

Thank you for allowing me the opportunity to speak to the Small Business Subcommittee on Procurement, Innovation and Minority Enterprise Development. My name is Joann Payne, President of PSM Consultants. PSM is located in Little Rock, AR. I represent several women's contractors associations and hundreds of individual women owned businesses throughout the United States. I also represent Michigan's Women Contractors Association represented today by Patrica Shea and several members of Women Constructions Owners and Executives of America represented by Debra Wilder.

The inclusion of women in the Disadvantage Business Enterprise Program is very near and dear to my heart and is very important to those women in the highway construction industry who have had to fight for equality and recognition as individuals.

Historically, minorities and women owned businesses have had a difficult time competing fairly in the highway construction industry. Prior to 1980, both minorities and women owned highway construction related businesses, however, these businesses were denied entrance into the "Good Old Boy System". Minority and women owned businesses were small in number and size. To afford equal opportunity for minorities and women in the highway construction industry, Federal Highway Administration established a good faith, regulatory program for both minority and women owned businesses. Even though the good faith programs were established separately, the programs were created because of a basic knowledge that minorities and women owned businesses had been discriminated against by prime contractors who had established strong relationships with other subcontractors. Also, because of ethnic and sex discrimination practiced by lending institutions, it was very difficult for minorities and women to secure bank loans and bond insurance.

Under the guidance of the good faith efforts of the Federal Highway Administration, minorities and women were assimilated into the highway constructions industry. In 1982 and prior to the creation of the Disadvantage Business Enterprise Program, the good faith regulatory MBE program reached a national goal of 5.3% and the WBE program reached a national goal of 3.0%; a difference of 2.3%. After the passage of Section 105F of the 1982 Highway Bill, which excluded women as a disadvantaged group, the Federal Highway Administration continued the good faith regulatory program for WBE's. By 1982, the numbers for the two programs had changed drastically. The DBE program under Congress' 10% mandate reached a national goal of 12.3% or $1.3 billion and the WBE good faith regulatory program reached a national average of 3% or $326 million; a difference of 9.3% and approximately $1 billion. (See Charts)

It is evident from the charts that from 1983 to 1986, minority participation grew tremendously, and women participation did not grow at all. The DBE program with a mandated goal of 10% had discriminated against the growth and development of the WBE regulatory program. Because of this discrimination, Congress acted fairly and responsibly when they finally included women owned businesses in the Disadvantaged Business Enterprise program.

This action by Congress was not taken lightly nor was it conceived in deception. Women worked openly in both the House of Representatives and the United States Senate to have women included in the DBE program. Women testified before the Senate subcommittee on transportation in 1985 and 1986 outlining the discrimination women were experiencing in the highway construction industry and reasons why they should be included in the DBE program. The Senate full committee on Environment and Public Works responded positively and women were included in Senate Bill 387. Also, on August 9, 1986, Congressman John Paul Hammerschmidt of Arkansas offered a floor amendment to the House Surface Transportation and Uniform Relocation Assistance Act which made women owned businesses eligible for the DBE program and defined women as disadvantaged persons for the purpose of this Act. The Hammerschmidt Amendment had exactly the same language offered in the Senate Bill S387. The Hammerschmidt Amendment was cleared with Congressman Parren Mitchell and the Black Caucus before Congressman Hammerschmidt offered it on the House floor. The amendment passed without any opposition. In 1987 both the Senate bill that was passed on February 4, 1987 and House bill 2, included women in the DBE program.

Congress acted wisely and responsibly by including all groups in the DBE program who had been denied an opportunity to compete equally in the market place. Congress also acted fairly when they combined the two disadvantaged groups into one goal and did not raise the 10% goal. The 10% minimum goal is what I consider the ground floor. It is not the ceiling. The states have an option to raise their DBE goal above the 10% goal and should do so if historically they have reached a DBE goal and a WBE goal of higher than 10%. In fact there are 15 states that have a goal higher than 10%. But for those states such as Montana and Idaho that have a small minority population, they should also have an option to stay at the minimum of 10%.

Even though Congress passed the Surface Transportation and Uniform Relocation Assistance Act on April 2, 1987, women did not participate fully as DBE's until January, 1988. Some states included women immediately; however, others did not comply with the law until after October, 1987; namely New York, Michigan, and California. The first quarterly Federal Highway Administration figures (See Chart) shows that women have not had an adverse impact on the minority owned firms. MBE participation for the first quarter was 12.4%. Women participation for the first quarter was 3.2%. These figures reflect the argument that the Conyer's amendment which would guarantee that racial and ethnic minorities would receive 65% of benefits set aside under the Surface Transportation Relocation Assistance Act is premature and conceived from unfounded fear and allegation on the part of minority contractors, minority association leaders and some House of Representatives staff members.

The 1987 DBE program is not a year old. There is not enough information available to make a fair and reasonable decision on the merits of any type of change. The Conyer's Amendment is very discriminatory against women. Why should women accept a national average of 3.5% separate goal, when for the first time in history, women owned businesses can compete for 10%. Women must be afforded the same opportunities to grow and expand as minorities did in 1983 with the creation of the DBE program with a national average of 10%. If Conyer's Amendment was allowed to pass, Congress would have in essence shown favoritism towards one segment of the disadvantage group. I believe the Conyer's Amendment should be tabled permanently and the DBE issue referred to the House Public Works Committee for futher study.

The Dan Ryan Expressway project was an unfortunate experience for the minority in Chicago, but the events in Chicago are the same type of experience women have encountered since 1980. In fact the WBE's in New York can tell you first hand about discrimination. A project in New York was let to contract on December 17, 1987. The project had separate goals (DBE's goal of 15% and WBE's goal of 2%). The New York project like the Dan Ryan project is a large reconstruction job with a large set aside for DBE's. Even though women were added to the DBE program on April 2, 1987, New York and several other states refused to comply with the new law. Finally Ray Barnhurt, then FHWA Administrator sent the states a final decree on August 26, 1987. Mr. Barnhurt basically stated that any project authorized after October 1, 1987, shall have a single DBE goal. On September 25, 1987, five days before the October 1 cutoff date, New York state through the New York FHWA Director authorized a large reconstruction project in

Rochester, New York. However, the project was not let to contract until December 17, 1987 (eight months after the passage of 106C of STURRA Act and four months after the August 26 memo and three months after the final rule in the Federal Register dated October 21, 1987.) The WBE's in New York tried desparately to be included in the December letting, but they were denied at every level. Just like the minorities in Chicago, the women in New York felt they had been purposely excluded. The reason for their outrage was the fact that the authorization came five days before the cutoff date and the contract was not let until December. They felt this was a direct effort on the part of the minorities in power who implement the DBE program to exclude women from a large project that the women had every right to be involved in. The women did not get the press or congressional attention the minorities received in Chicago even though they tried.

If the minorities were to walk in the shoes of the women and had just been included in a program that was going to finally afford them equal opportunity and they had to endure the delays, the discriminations and the false accusations and now members of Congress are trying to legislate change in a program which has not had an opportunity to develop, I wonder how the minorities would be feeling right now? Well, if you really want to know the answer to this question, ask a WBE. In fact ask the WBE who is going to testify right after me.

Briefing

Issue: **Rehabilitation of Dan Ryan Expressway in Chicago - WBE's Capture most of the DBE Goal.**

Background:

- The Illinois DOT has recently awarded two major construction contracts for the rehabilitation of the structure on the Dan Ryan Expressway. The contracts provide for the rehabilitation of the approach roadways and for rehabilitation of half of the 2-mile long structure.

  Both the approach roadway and structure rehabilitation contracts contain DBE goals of 15 percent.

Dick Urban

- The approach roadway contract was awarded to Madden Construction Company for approximately $30 million. To fulfill the contract DBE goal, Madden listed four subcontractors on the DBE utilization form. The DBE firms were:

FIRM	VALUE	ETHNIC GROUP
Palnex	1.6 Million	Hispanic
Alkas	1.1 Million	Black
P.A.L. WBE	0.6 Million	Women
Steger Steel -	0.6 Million	Women

mat Walsh

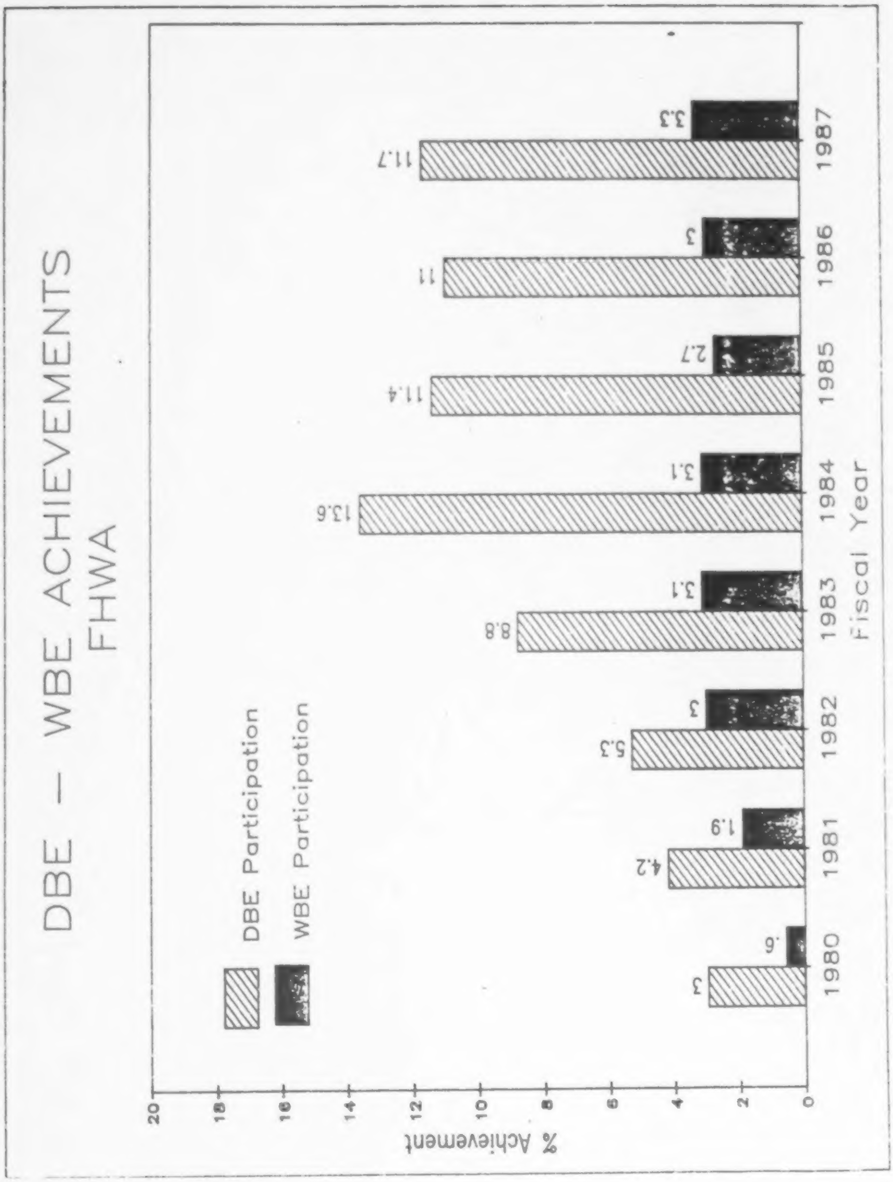
[redacted]

The structure rehabilitation contract was awarded to Walsh Construction Company for approximately $52 million. Walsh listed these five subcontractors on the DBE utilization form.

[redacted]

FIRM	VALUE	ETHNIC GROUP
Castle	1.7 Million	Women
P.A.L.	0.9 Million	Women
O'Leary -	0.5 Million	Women
S.S. -	4.7 Million	Women
Guerra	1.0 Million	Hispanic

Work on both projects is scheduled to begin on March 1, 1988, and is scheduled to be completed by November 1, 1988. Each project has an incentive/disincentive clause of $30,000/day.


DBE — WBE ACHIEVEMENTS
FHWA
DBE Participation
WBE Participation
% Achievement
0
2
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18
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DISADVANTAGED BUSINESS ENTERPRISE/WOMEN BUSINESS ENTERPRISE

(DBE/WBE DATA)

		DBE (ETHNIC MINORITIES)		WBE (WOMEN)	
FY	TOTAL FEDERAL-AID CONTRACTS	PERCENT PARTICIPATION	AMOUNT	PERCENT PARTICIPATION	AMOUNT
1986	$10,932,278,000	12.3	$1,344,512,000	3.0	$326,319,000
1987 (1st Qtr)	$2,226,357,000	12.6	$281,191,000	3.0	$66,247,000
(2d Qtr)	$2,245,470,000	12.3	$277,054,000	2.6	$58,578,000
(3rd Qtr)	$2,688,784,000	11.2	$301,439,000	3.3	$88,085,000
(4th Qtr)	$3,241,908,000	11.3	$365,535,000	4.0	$128,363,000
1987 (TOTALS)	$10,408,811,000	11.7	$1,220,417,000	3.3	$339,314,000
1988 (1st Qtr)	$2,480,370,000	12.4	$307,849,000	3.2	$79,943,000

NOTE: Data based on prime contract awards plus subcontract commitments.

NOTE: The 1987 Data Total reflects adjustments in data that were reported during the individual quarters. Thus, the summation of the 1987 quarterly data does not equate to the 1987 Totals.

The following is an overview of the changes needed in the Disadvantage Business Enterprise Program. The conclusions are based on a sincere effort by me, Joann Payne, to gather creditable information. Also, the conclusions are drawn on a personal observation and active participation with WBE's. The conclusions are a sincere and caring effort to make the DBE program work for all parties involved.

I am frustrated and very tired of hearing States and Federal Highway Administration continually complaining about how bad the program has developed. In my opinion they have no one to blame but themselves. If the State/Federal Highway Administration would put as much positive energy into the program as they do negative energy, the program would be a great success. Subconsciously, I fear, neither the States nor the Federal Highway Administration truly want the DBE program to succeed. Of course, that is a personal opinion, but it is based on a fair frame of reference.

It is my opinion the State, Federal Highway Administration and the DBE's themselves have forgotten what the DBE program is all about. The program is to help those people who historically have not had a fair access to the free market place. The DBE participants are good American Citizens and they deserve better treatment than has been given them in the past. The potential participants and the DBE's themselves have been investigated, interrogated and treated as if they were criminals. This must not continue.

Ultimately, the goal of the DBE program, Congress, State Department of Transportation, Federal Highway Administration and the Secretary of Transportation is to build superior highways as economically and safely as possible. I believe this has been forgotten.

The following are changes needed in the DBE program.

Qualification

The qualifications that are listed in the Federal regulations (23.5 Definitions) are appropriate. However, a tremendous problem has developed because of a lack of leadership from the Federal Highway Administration in the form of memo's dealing with the term experience as a qualification for certification in the DBE program. This assumption (usually directed toward WBE's) has been supported by the Civil Rights Department of the Secretary of Transportations office. If a female owner applies for certification as a DBE and she happens to be a white female who has a husband, father, brother or in fact any other males working for her company the chances of her getting certified in approximately 40 states are almost impossible. An example of this problem is the State of Michigan who has always had an active WBE program. Michigan has 46 active women owned companies out of a program that houses 354 DBE's. Michigan denied 200 WBE applications in 1987. The reasons sited were a lack of expertise and control/ management in their companies. In many cases it was already assumed by the on site interviewer that the female did not have control or manage her company if a male was involved in the operation. Experience should not be a requirement for qualification for certification in the DBE program. How will the program grow and develop with experience as a requirement? Also, we all know experience does not guarantee leadership ability or management skills.

Clarity of Terms

Clarity of terms must be addressed. The States want leadership and guidance from the Federal level. In all sections of the regulations clarity and in-depth examples must be made.

The subject of "fronts" must be addressed and examples given. Control and manage must also be addressed. An example of the problems that exist within the control/manage areas is found in section 23.53 (A) 2, 3 and 4. In many cases the State Department of Transportation uses this section to discriminate against any company they do not want in the program. This section has been used by the states to justify lack of experience, control/manage, *even though the president of the company is acting within established business practices. An example of this problem is the many WBE's who have not been certified because: they could not run a piece of heavy equipment, or they were not involved in every stage of graphic design or they were not part of the total bid process for each project or they were not regularly seen in the work site areas. If a company only had one project and one employee, these demands may be realistic for non-certification; however, if a company is involved in many job projects and /or a very large project these requirements are unrealistic, unfair and not very smart. The company would be bankrupt within six months if its president performed each of these duties. A president's job is to oversee and approve as well as have an "on hands" control of the company.*

Pre-Qualification

I believe there is a strong need for Pre-Qualification in the DBE program for sub-contractors of small specialty industries. This requirement from the Secretary of Transportations office would be welcomed by the State Department of Transportation and would eliminate fronts quicker than any other method. When I discuss Pre-Qualification, we are dealing not with the Financial end (bonding requirements can be amended to fit the needs of the DBE companies) but with the experience level. A temporary certification should be issued to new companies that lack the experience or expertise in the area in which they are applying for certification. A permanent certification would be issued within a short period of time or when the DBE company could prove successfully to the state they have obtained the experience and expertise to execute the job safely and properly.

The DBE program has been in existence long enough to satisfy the notion there are enough DBE's who want to have an equal chance to compete in the market place. Now lets give them the correct tools to do the job well. The Pre-Qualification requirement should in no way, shape or form hinder the development and purposes of the DBE program. The justification for this requirement resides in the fact that there has been a substantial rise in accidents and deaths in the construction work zone. The responsibility of safety in the construction work zone should also be a priority of the Secretary of Transportations office.

The notion of pre-qualification for DBE's may be instituted in a pilot program in one of the nine regions. If it works in a two year period, moves should be made to incorporate pre-qualification in all 50 states and 2 territories.

The pre-qualification requirement would also eliminate the existence of fronts/shams. Pre-Qualification would limit a company to their own expertise. An example would be a barricade company certified in that industry could not manufacture or distribute highway signs or guardrails unless they were also certified to do these services.

The DBE company with its temporary certification could bid jobs before their pre-qualification requirement is met, but would be assigned on site instruction by the state and would be required to attend all workshops provided by the state or private association that would enhance their experience and expertise in their industry as well as the highway construction industry in general. The states are appropriated approximately ten million dollars to assist the DBE program. This money could be spent in the pre-qualification program which should include the present subjects already being addressed in the workshops.

Certification and De-Certification

With the passage of STURRA, section 106(C) has given the Secretary of Transportation the guidance in how to implement the Disadvantage Business Enterprise Program. Congress has dictated a uniform certification program and given the Secretary of Transportation the power to develop a program of uniformity in the 50 states and 2 U.S. Territories. The American Association of State Highway and Transportation Officials (AASHTO) has suggested in its booklet Guidelines foe the DBE Program

Administration that each state has the exact same certification requirements. A uniform form to be used by every state. An example of a uniform certification DBE program would be if a company was granted certification in the State of New York, that company would automatically qualify in the other 49 States and 2 U.S. Territories . Of course the desire of the DBE company to expand to the other states and the company's financial status would have a bearing if a company would receive final certification in other states, but the DBE company would not have to go through the total certification process for each state in which the company wanted to expand their company. Uniform certification is a positive idea. Uniformity would cut down on red tape and make the DBE program more responsive to the DBE participants, the states and the Federal Highway Administration. Uniformity would also encourage fair implementation of the DBE program throughout the United States.

The present certification process has many inherent problems. Two of the major problems with the process are the on site interviewers and the informal/appeals hearings. Both of these problems stem from the assumption by the states Department of Transportation personnel that those companies applying for certification in the DBE program are fronts/shams or they do not have the ability to control/manage their companies based on the fact they are female. The DBE applicant is treated as if he/she is a criminal, trying to steal from the state.

The informal/appeals hearings are undemocratic and usually ends up being an inquisition instead of an information gathering session. Out of all the complaints by the DBE participants themselves, the number one complaint is the unfair treatment of the applicant or DBE participant by the personnel of the Department of Transportation through the certification process.

Another problem that seems to plague the certification process is the length of time between applying for certification and actually being notified of the results. Many WBE's have reported it has taken them up to 1-1/2 years to find out the results of their applications. In the process, the loss of documents, applications and other important materials by the state

Departments of Transportation were a regular theme amongst WBE's. The division in the state Department of Transportation that is responsible for the implementation of the DBE program should have stronger instructions from the Secretary of Transportations office on the length of the certification process. There is a need for a more competent and efficient system.

The certification process should have a check/balance system where the DBE applicant shall have an independent agency to go to, away from the office implementing the program , where if he/she is dissatisfied with the conduct of the State Department of Transportation. In many cases WBE and non-WBE who were denied certification reported treatment that was abusive, illegal and they felt their Civil Rights had been violated. The word used most often to describe the action of the personnel involved in the certification process was "dictatorship".

To open the certification - De-Certification process to better communication between all interested parties and to check the behavior of the personnel of the implementing office, the states should be required to conduct two workshops a year to educate all DBE participants and potential participants on all State/Federal regulations, rules and the civil rights of individuals who will participate in the program. The State and Federal regulations should be required to be handed out and each section discussed. Not one WBE with whom I spoke knew the rules, regulations or her civil rights in dealing with the State Department of Transportation. Not one WBE had a copy of the Federal regulations and few had a copy of the State regulations. A well informed DBE participant will be able to check the misbehavior of the State and allow the program to automatically move on a more forward - upward level. The loss of certification should be an exception to the rule and not the rule. De-certification should have specific reasons and be listed in the regulations for all to understand. Also there should be specific examples in the regulations that constitute de-certification and specific examples that does not constitute de-certfication.

Because Congress has made a presumption of social and economic status for disadvantage groups, there is a legal cause for the system of rebuttle , therefore, there is a need for a third party challenge. However, the present third party challenge process is harsh and undemocratic. The third party challenge section of the Federal regulations are totally misunderstood and may be unconstitutional. With the inclusion of women in the DBE program, there is a great fear, the third party challenge will be used to discriminate against women and/or middle class citizens who qualify under the disadvantage statute and deserve a chance to compete fairly in the market place.

There has been so much misunderstanding about what constitutes the reason for the third party challenge. This, in part, is due to the lack of knowledge and understanding by the State's Department of Transportation concerning the third party challenge system and a lack of understanding and knowledge from the third party themselves. There must be complete clarity in the Federal regulations dealing with the third party challenge. The purpose of the section should be defined and enumerated. The regulations should state the DBE program is for middle class participation as well as other social/economic groups who qualify under the disadvantage status.

The social and economic definitions under the third party should be rescinded and amended. An individual who qualifies under the presumptive group defined by Congress should not be required to prove his/her discrimination. Congress has already acknowledged the historical justification of social disadvantage. The social requirements should be removed from the Federal regulations.

Congress has given the Secretary of Transportation directions on the monetary requirements of an individual company involved in the DBE program. under the law, an individual company who has gross sales of $14 million dollars for three conclusive years has graduated from the program. Possibly, the Secretary of Transportation could develop a formula on which to base the criteria of an economic third party challenge. Example: if the $14 million dollar figure was broken down into bonding language, the president of a company would personally have to be worth approximately $2 million dollars. The company would have to have equipment worth approximately $2 million dollars to receive bonding on $14 million dollars. Obviously, this is a criteria for the departure of a company out of the DBE program. Maybe it could be the basis for a third party challenge.

A third party challenge should not be based on the success of an individual company since its inclusion into the DBE program. Nor should it be based on the material gains of its owner(s). A third party challenge should be based on the personal wealth of its owner or economic success of the company prior to entry into the program.

There are those who believe that if the total DBE population were to be challenged by a third party, under the present system, approximately 20% could withstand the challenge and continue in the DBE program. The system is needed to take care of "the exceptions to the rule", however, the system also needs to protect the DBE participants whose livelihood depends solely on the DBE program.

Implementation

With the inclusion of women in the DBE program, a fair representation of white women should be mandatory in the implementation of the DBE program.

Advisory Council

California Department of Transportation Office of Civil Rights

lack Business Association

California Association of Minority American Contractors

Women Construction Owners and Executives, USA

Alliance of Latin Business Associates

Black Business Association San Francisco Bay Area

California Indian Contractors

Mexican-American Opportunity Foundation/Chicano Federation

Black Chamber of Commerce

United Minority Business Entrepreneurs

National Association for the Advancement of Colored People

Asian Business Association

Century Freeway Contractors

Asian, Inc.

Minority Contractor's Association of Northern California

National Indian Contractor's

The California Department of Transportation Advisory Council on Civil Rights, was created to assist and advise the State of California to better serve and create opportunities for minority and women business enterprises in the transportation/construction industry. Since the passage of the Surface Transportation Urban Relocation Assistance Act (STURRA), the Advisory Council has noted an adverse impact upon the opportunities available to women and minorities.

California has 30% of all women and minority business enterprises in the country. Yet, California only receives $500,000 or 10% in assistance from the Department of Transportation for supportive services to assist women and minorities gain access to the "mainstream" of the construction industry.

Recognizing the Department of Labor's prediction that by the year 2000 80% of the new labor force will be comprised of women, minorities and immigrants; and, without adequate training and assistance the United States will face a severe shortage of trained craftsmen in the workforce. Also recognizing the population projections for the next ten years, the Department of Census has targeted California as one of the states that will continue to attract a large number of workers from other parts of the country.

Therefore, it is essential that California receive its fair share of funding in order for it to properly assist the ever increasing numbers of women and minorities.

Secondly, the passage of STURRA has had an adverse impact on the participation of women business enterprises. Prior to STURRA, California had goals of 3% and 13% for women and minorities respectively. Caltrans through its excellent assistance and affirmative action programs were able to assist contractors and monitor goals so that these goals were generally met. Recent legislation in California has increased those goals to 5% and 15% for all state contracts (not just Caltrans construction).

As a result of STURRA the WBE and MBE goals were combined under the Disadvantaged Business Enterprises (DBE). Since that time, female participation on Caltrans projects has significantly decreased. In some types of construction, the participation is even less than 1%. Because California has a larger population, Caltrans has been able in the past to require and receive minority and female participation far in excess of other states.

Therefore, the Caltrans Advisory Council seeks to have legislation introduced amending STURRA to allow States to impose higher and separate goals for minority and women participation

1120 N Street, Sacramento, California 95812 (916) 445-2059

Statement for the Record
On Revisions to the Disadvantaged Business Enterprise Program
By the American Road and Transportation Builders Association
June 9, 1988

The American Road and Transportation Builders Association (ARTBA) is deeply concerned about possible revisions to the Disadvantaged Business Enterprise (DBE) program, as proposed at the May 4, 1988, hearing of the Subcommittee on Procurement, Innovation and Minority Enterprise Development of the House Small Business Committee.

ARTBA is a Washington, D.C.-based national federation of transportation construction industry interests. Our members include contractors, transportation safety industry representatives, equipment manufacturers and materials suppliers, transportation planning and design firms, federal, state and local public transportation officials, and educators involved in transportation engineering.

Witnesses at the May 4th hearing pointed to perceived inconsistencies in the ratio of construction contracts awarded to Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) since the enactment last year of legislation revising the DBE program to permit inclusion of WBEs in meeting the 10 percent DBE goal.

During the subcommittee hearing, testimony was heard on an amendment that would again mandate separate goals for MBEs and WBEs for federal construction projects. It was indicated that an amendment may be offered to H.R. 4174, the *Small Business Reauthorization Act*, that would increase the current 10 percent combined DBE goal to a 10 percent MBE / 5 percent DBE goal.

ARTBA strongly opposes any changes to current DBE law. Our members have indicated that revisions to the DBE set-aside program for federal-aid highway construction, as enacted in the *Surface Transportation and Uniform Relocation and Assistance Act of 1987* (STURAA), have been beneficial to the successful operation of the program. The classification of WBEs as "presumptively disadvantaged" offers these new companies an enhanced opportunity to compete for federal contracts and makes it easier for prime contractors to legitimately meet the 10 percent mandate.

The testimony presented before the subcommittee concerned isolated projects where WBE firms were "overrepresented" in the DBE program, from the perspective of MBE contractors. Since the revised DBE program has only been in operation for one year, ARTBA believes it is premature to make additional changes based on the selected examples presented by witnesses.

Although ARTBA has consistently rejected the use of mandated DBE goals on federal-aid construction projects, our members make every effort to comply with the DBE provisions of STURAA. If, however, Congress again separates WBE and MBE goals, our members may find it impossible to comply because of the absence of qualified firms in certain geographic areas of the United States.

ARTBA is also against the idea of mandating specific percentage goals for MBEs and WBEs within the existing 10 percent mandate, because this will only increase difficulties in finding sufficient qualified DBE firms to meet separate goals in parts of the country with varying representation of minorities and women in the construction industry.

ARTBA strongly opposes any increase in the current 10 percent goal. Increasing this threshold would impose a special hardship on non-minority specialty contractors. These firms are already having a difficult time competing for work, since a great number of DBE firms work exclusively in specialty construction. This construction sector is most likely to be used by prime contractors to meet the mandated goal.

Because of this anti-competitive burden on specialty contractors, ARTBA recommended to the U.S. Department of Transportation (December 21, 1987) that regulations be revised to state that no one segment of the highway construction industry should contribute a disproportionately high share toward the goal for any highway project. This suggestion was not implemented, however. Should your subcommittee again discuss changes to the DBE program, we believe this provision warrants further consideration.

In areas where there are a large number of well-qualified, certified MBE and WBE firms, states already have the option of increasing their DBE goals beyond the federal level. For example, this has occurred in California, which has 30 percent of the country's DBE contractors. That state recently raised its set aside goal for W/MBE highway construction to 20 percent.

ARTBA wants to help genuine MBEs and WBEs obtain their fair share of available federal-aid construction work. However, our contractors already experience difficulty finding qualified W/MBEs to perform the percentage of work mandated by the STURAA.

Raising or separating the goals already legislated by Congress, will not improve this situation and may in fact be a step backward in assisting qualified WBE firms break into the federal construction industry.

Any future revisions that may be deemed necessary should only be considered after sufficient time has been allowed to fairly measure the success or failure of the combined DBE program. We ask Congress to give the program a chance to work, and not to hastily legislate changes in a program that has not yet had time to fully develop.

Thank you for considering the perspective of the road and transportation construction industry. ARTBA will be happy to provide this subcommittee with any additional information that might be desired.

AMERICAN TRAFFIC SAFETY SERVICES ASSOCIATION, INC.
ATSSA BUILDING
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May 24, 1988

Comments for the Record
The Honorable Ike Skelton
Chairman
House Small Business Subcommittee
on Procurement, Innovation,
and Minority Enterprise Development
B 363 Rayburn House Office Bldg.
Washington, DC 20515

Dear Mr. Chairman:

I understand that your committee has reopened the issue of DBE federal set-aside goals, as mandated in the Surface Transportation Act of 1987. Our association, the American Traffic Safety Services Association, has testified on this issue a number of times, both before the House Public Works Committee and the Senate Environment and Public Works Committee. We would like to respond in writing at this time and would appreciate having these comments included in the record as part of your committee hearings of May 4, 1988.

ATSSA is a national trade association representing companies which provide traffic control and safety devices for our nation's highways. Because our association is made up primarily of small specialty subcontractors, the impact of 106 (c) has been a major source of concern to members of the traffic control industry, as it has been for other specialty subcontractors. Oftentimes, specialty items fill the 10% goal, and small industries fill 100% of the requirements. In Colorado, for instance, almost all traffic control work is being done by DBE's, leaving non-DBE's without work on federal-aid projects. To allow one segment of the highway construction industry to bear the brunt of the program is unfair.

If the goal of equal opportunity is to be met, then everyone must share in the responsibility. ATSSA has previously recommended putting limits on the amount of work in each specialty area which could count toward the DBE goal. A 1986 Federal Highway Administration Study assesses the impact of the DBE requirement in the federal-aid highway construction program. The study ("An Assessment of Program Impacts of the DBE Requirement in the Federal-Aid Construction Program," March 1986) notes that DBE participation more than doubled from FY 1982 to FY 1984. The study goes on to note that the capacity of legitimate DBE's to perform highway construction work has also increased; however, highway construction by DBE's is primarily performed through subcontracts which amount to 85-90% of the total program.

Despite the large growth in highway construction outlays, the report points out that the non-DBE market shares of subcontracting markets have decreased substantially because the DBE requirement is being met principally through subcontracts with DBE's. "Particular non-DBE specialty subcontractors have seen their federal-aid highway construction markets shrink or even virtually disappear." (USDOTFHWA Report p.xi, March 1986).

While it is noted that DBE programs have increased costs by about $180 million in FY 83-84 (op cit, p. xi), most of these construction costs have been passed by prime contractors on to states in their bid prices. "There has been no major impact of the DBE requirement upon bidding competition among prime contractors." (ibid). Thus, while the overall market for non-DBE primes has grown substantially, the market for non-DBE subcontractors has been flat and has decreased for specialty contractors. "A 10% goal is achieved principally through DBE subcontracts." (op cit. p. 154).

In order to make the program work better, to redistribute the responsibility of 106(c) throughout the construction industry, and to prevent ghettoization of minorities into specialty areas, ATSSA recommends putting limits on the amount of work in each specialty contracting area which may count toward the 10% goal. To arbitrarily raise the goals, as I understand is being considered by your committee, without consideration of the impact on non-DBE specialty subcontractors, would be unfair.

ATSSA supports the report language which accompanied the 1987 Highway Act. In the report, the conferees expressed their belief that participation by DBE's should be distributed equitably throughout the highway construction industry and that the impact of 106(c) should not affect any segment of the industry disproportionately. Unless measures could be taken which could remove the burden of 106(c) from the shoulders of the specialty subcontractor, ATSSA strongly opposes any increase in the current 10% goal as well as any mandate for specific DBE/WBE goals within that 10%.

I understand that your committee is primarily concerned with whether the recent inclusion of women-owned businesses into the DBE program is resulting in a disproportionate representation of WBE's in federal-aid highway work. ATSSA's DBE/WBE committee is also concerned with this question. We originally supported Mr. Hammerschmidt's proposal to include women in the program, and we were in favor of eliminating separate goals for DBE's and WBE's. ATSSA would not favor any changes in this part of the program until sufficient time has elapsed so that FHWA or Congress can assess the impact of the current legislation, and we feel it is too early to properly evaluate the program at this time.

Respectfully yours,

Caroline Carver

Caroline Carver
Director, Gov't. Relations

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

1957 E Street, N.W. • Washington, D.C. 20006 • (202) 393-2040 • TELEX 279 354 AGC WSH

JAMES W. SUPICA, *President* PAUL EMERICK, *Senior Vice President* KIRK FORDICE, *Vice President*

RICHARD E. FORRESTEL, *Treasurer* HUBERT BEATTY, *Executive Vice President*

May 9, 1988

The Honorable Ike Skelton
Chairman
Subcommittee on Procurement, Innovation,
and Minority Enterprise Development
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Skelton:

The Associated General Contractors of America is writing to express our views regarding a proposed amendment to H.R. 4174 which would modify the Disadvantaged Business Enterprise (DBE) program for federally-assisted highway, mass transit and airport programs. We understand that the proposed amendment would require that 65 percent of DBE participation be met exclusively by firms owned by racial and ethnic minorities, and 35 percent of DBE participation be met exclusively by firms owned by women (WBEs).

AGC believes that such an amendment would be counterproductive, and is not warranted since the current nationwide statistical evidence does not confirm any major shifts in participation by DBEs or WBEs since the program was combined into a single goal system in 1987.

Some background information on this issue is helpful.

The Department of Transportation began a regulatory program for minority and women-owned businesses in 1980 on federally assisted transportation programs. Each recipient of federal funds was required to establish a minority business (MBE) program and establish separate goals for MBE and WBE participation in those federally-assisted contracts.

In 1982, the Surface Transportation Assistance Act contained a provision which mandated a 10 percent participation by DBEs in federally assisted highway and mass transit projects. The 10 percent requirement did not include women.

In the 1986-87 reauthorization cycle of surface transportation programs, the Congress decided to include women within the 10 percent DBE requirement. Section 106(c) of the 1987 Surface Transportation and Uniform Relocation Assistance Act included WBEs as DBEs and consolidated the existing two-goal system into a one-goal system.

Under the two-goal system, contractors were faced with selecting separate DBE and WBE contractors to meet separate goals. In many cases, States were not in a good position to set goals at realistic levels since they could not be aware on a continuing basis of the availability and capability of DBE and WBE firms. Under the new single-goal system, contractors are able to make best efforts to meet the DBE goals using DBEs, WBEs, or a combination of both. The contractor can now select the best qualified and most competitive firms from the combined list of certified DBEs and WBEs.

AGC understands that there has been some controversy surrounding the consolidation of the program into one goal. Both DBEs and some WBEs have expressed concern that their share of the market may be adversely affected. The one-goal system has been working for a little over a year and the statistics do not reflect a cause for alarm. Based on information from the Federal Highway Administration which is enclosed with this letter, the participation levels for DBEs and WBEs have not changed substantially from 1986 to the present, even with the change in the law in 1987.

AGC does not believe there is any evidence that a "nation-wide problem" exists which requires an immediate legislative solution. To the contrary, the early evidence clearly indicates that no national problem currently exists. Accordingly, AGC believes an amendment modifying the DBE goal is unwarranted and would be counterproductive.

An identical letter is being sent to Congressman John LaFalce.

Sincerely,

Hubert Beatty

Hubert Beatty
Executive Vice President

Enclosure

SAN FRANCISCO
Black Chamber of Commerce

PRESIDENT
James D. Jefferson, *President*
Jefferson Associates, Inc.

1st VICE PRESIDENT
L. Andrew Jeanpierre, *Partner*
Jeanpierre & Company, CPA

2nd VICE PRESIDENT
Frederick E. Jordan, PE
F.E. Jordan Associates, Inc.

TREASURER
Donald Todd, *President*
Don Todd Associates

GENERAL COUNSEL
Samuel Norman, Esq.

BOARD OF DIRECTORS
Muhammad Al-Kareem
Editor and Publisher
New Bay View Newspaper

Art Blackwell, *MBE Director*
United Airlines

Rickford Bradley
M/WBE SB Director
Pacific Bell

Bert Campbell, *Program Manager*
MBE Progr[illegible], Purchaser's Office
City of San Francisco

Faheem A. Hameed, *Executive Director*
Urban Economic Development Corp

Anette Harris, *President*
Loupe Associates

Aileen C. Hernandez, *President*
Aileen C. Hernandez Associates

Andre [illegible] [illegible]try Affairs Manager
AT&T [illegible]ations

Zula [illegible] [illegible]mpliance Officer
San [illegible] Human Rights
Comm[illegible]

Ernie Low[illegible] [illegible]esident
Ernie Lowe & [illegible]ns Construction
Company

Earl White, *President*
E.H. White & Company

Carl Williams, *Attorney-at-Law*
James, Jeffers & Williams

May 17, 1988

Honorable Ike Skelton
Chairman, Subcommittee on Procurement,
Innovation and Minority Enterprise Development
Committee on Small Business
House of Representatives
Room 2361 Rayburn Building
Washington, D.C. 20515

Dear Congressman Skelton:

I request that the following comments be placed in the hearing records of 5/4/88 of the Subcommittee which you chair.

The National Association of Black Consulting Engineers and the San Francisco Black Chamber of Commerce have worked diligently pursuant to the implementation of the MBE/DBE Regulations of the Surface Transportation Assistance Act (STAA) of 1982. However, the professional business community such as engineers, architects and planners have realized little or no participation in providing services in California (and some of the other states) which plan and design their facilities in-house.

This in-house policy allows certain states receiving STAA funds to circumvent the intent of the Act. In many cases these states will award state-funded contracts without MBE/DBE goals and then perform Federal grant work with their own in-house staffs.

It should be required by law, whether the state grantee performs the planning and design with its own staff or contracts it to consultants, that the MBE/DBE goal should apply to all funds used for surface transportation improvements. We feel strongly that unless this situation is remedied, the Act's intent of providing business opportunities for MBE/DBE professional service firms will be effectively circumvented.

Thank you for your consideration and sensitivity in this matter, which is so vital to the development and survival of the Nation's MBE/DBE professional service firms.

Please contact me if you need further information on this problem.

Sincerely,

Fred E. Jordan

Frederick E. Jordan
Past President
National Board of Black Consulting Engineers
San Francisco Black Chamber of Commerce

cc: CALTRANS Advisory Council, Office of Civil Rights

1426 Fillmore Street, Suite 205, San Francisco, CA 94117
(415) 922-8720

Blue
Ridge
Seeding

4070 Bluebird Lane
Salem, Virginia 24153

Patricia A. Wright
(703) 384-6408
Mobile 772-0300
Shop 380-3959

May 4, 1988

Ike Skelton
B363 Raven Office Bldg.
Washingtion, DC 20515

Dear Sir:

RE: Bill # HR4174

I was disappointed to learn there is a congressman John Conyers trying to get a bill passed regarding percent of minority contracts to be offered in Va. Dept. of Trans. lettings.

I have worked hard for eight years to come to the place of having a good reputation with prime contractors and the VDOT. This bill will interfere with the progress women have made.

There was no warning of this situation. I would like something done to stop this bill.

Sincerely,
Blue Ridge Seeding
Patricia A. Wright
Patricia A. Wright
President

By Women, Inc.
103 BLACK DRIVE
HOT SPRINGS, AR. 71913
(501) 623-7055

May 2, 1988

Mr. Ike Shelton
Chairman, Subcommittee
Procurement Innovation and
Minority Enterprises Development
B-363 Rayburn Office Building
Washington, DC 20515

Dear Mr. Shelton:

RE: HR 4174

This letter is to register my opposition to changing the required percentage for Disadvantaged Business Enterprises on Government contracts to breaking the requirement out for minority and woman-owned business, each having a percentage.

We have found that the one percentage requirement works best for everyone because then the most qualified subcontractor with the best price lands the contract; it is fair for all concerned and each minority or woman-owned business has the same chance, plus the cost is kept down.

We hope that the one percentage requiremnt will not be broken down into two requirements.

Sincerely yours,

Mavis Troyer

Mavis J. Troyer
President

JUN 22 1988

D. A. Corbin General Contracting, Inc.

7750 23 MILE ROAD
UTICA, MI 48087
(313) 254-6665
FAX (313) 254-1213

June 18, 1988

Congressman I. Skelton
Subcommittee on Procurement, Innovation, and
Minority Enterprise Development
B-363 Rayburn House Office Building
Washington, D.C. 20515

Re: Separate Goals For Federal Highway Funds

Segregation of Women From Other Discriminated Against Minorities Relative to Receipt of Federal Funds For State Highway Contracts

Separate Goals Further Discriminating Against Women Relative to Other Discriminated Against Minorities In Regard to the Receipt of Federal Funds Provided States For Highway Improvement Contracts

Dear Congressman Skelton,

Relative to the above, the following is our understanding:

1. That it has been at the federal level acknowledged that women have historically been discriminated against and are a disadvantaged minority.

2. That federal law has been adopted including women in a single DBE category from which they, as well as other non-women minorities, could hopefully participate for federally funded State contracts without further discrimination.

3. That this fairly recent federal legislation imposed upon States compliance with this single goal for all these disadvantaged minorities without distinction between them.

4. That this legislation would appear fair in relation to prior and proposed alternatives providing separate and unequal funds to different minorities. This is because the alternatives to be fair would require the application of a formula (perhaps based on the population of each minority group as it relates to the total population of all minority groups) to determine what percent of federally funded State contracts would be set aside for each of a great number of minority groups, for example,

AN EQUAL OPPORTUNITY EMPLOYER

5. That, however, certain individuals or segments of our society are attempting to effect a retraction of the recently enacted progressive federal legislation which enable women to, with other minority groups, compete for contracts to the extent of 10% of those funded by federal tax dollars by establishing separate goals by which women would be denied the right to compete for State highway construction contracts except to the extent of approx. 3.5% (35% of 10%) of those funded by federal tax dollars.

6. That this proposed legislation is without any known legal precedent or logical rationale but for the financial benefit of the relatively fewer number of persons comprising a part of the special interest group promoting this parody.

7. That if segregation is again warranted between the various recognized disadvantaged minority groups, certainly a relatively small group should not be entitled to a relatively large piece of the federal money pie. Common sense dictates that if there are hypothetically four recognized minorities with certain populations that the State contracts flowing from federal funds should be available to each group in direct proportion to their population as by example set forth below.

DISADVANTAGED MINORITY GROUP	MINORITY POPULATION	MINORITY IN RELATION TO ALL MINORITIES	MINORITY ACCESS TO FED. FUNDED STATE HWY. CONT.
1. Women	$ 50 mil.	50%	50% of 10%
2. Blacks	$ 25 mil.	25%	25% of 10%
3. Asians	$ 12.5 mil	12.5%	12.5% of 10%
4. Latins	$ 12.5 mil.	12.5%	12.5% of 10%
Total	$100 mil.	100%	

To do otherwise would be to allow minority groups to discriminate against other minority groups. Certainly Latins should not have set aside exclusively for them 65% of the 10% of Federally funded State contracts when Latins only comprise 12.5% of all the disadvantaged minorities. Their share should be 12.5% of 10%. In a related vein if a contractor is not only an Asian but also a woman she should be able to bid on not only 12.5% of the 10% of federally financed State contracts set aside for Asians but also 50% of the 10% of federally financed State contracts set aside for women. So also, a black woman could compete for both 25% of 10% of the contracts and 50% of 10% of the contracts.

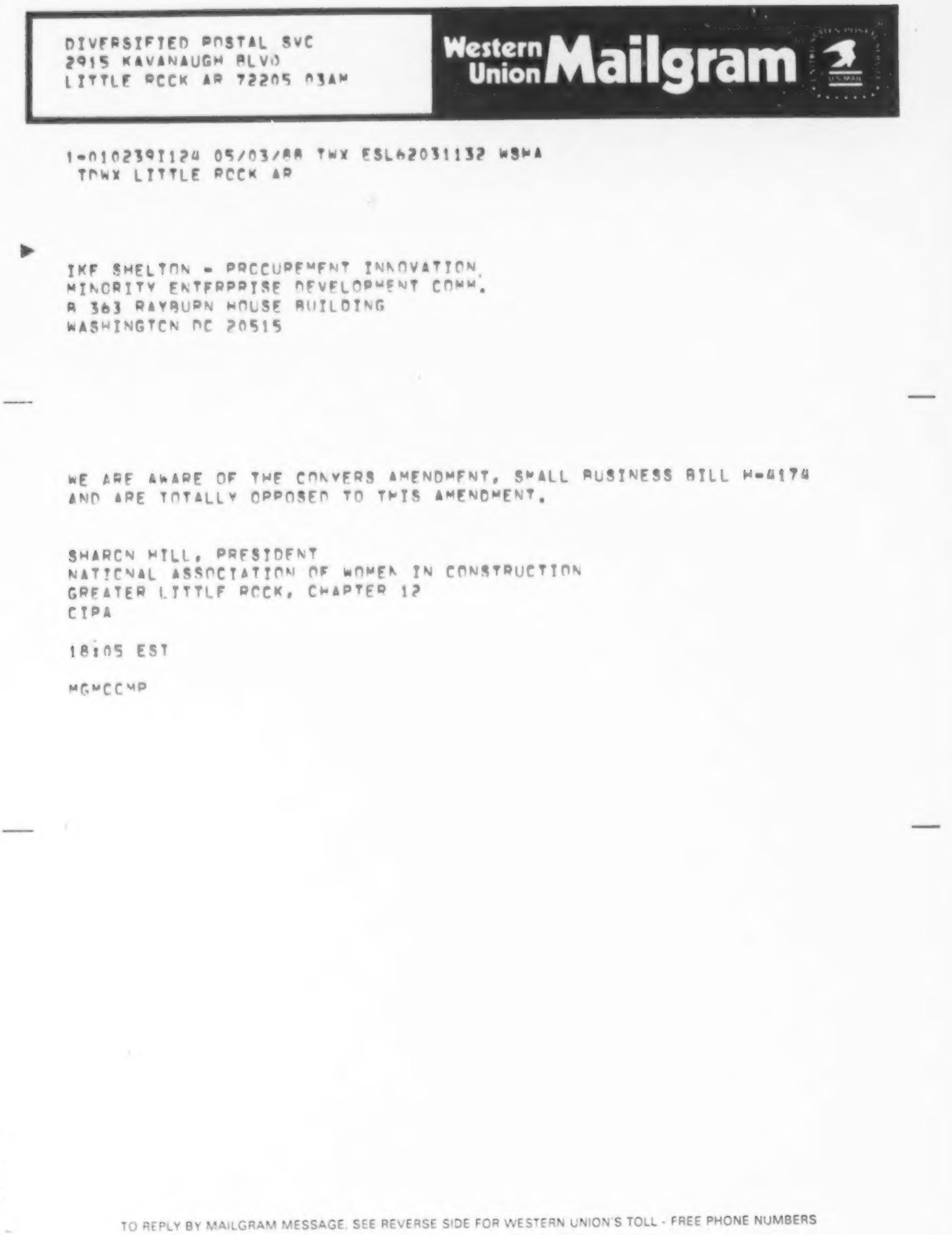
8. A simplified analogy of what is presently proposed for federal amendatory legislation would be to allow government to segregate $1 for two Latins to split while segregating $2 for a single Asian to keep. Not logical or fair is it?

Accordingly, our present position would be that proposed federal amendatory legislation in it's present form is a discriminatory deprivation of women's rights and should not be enacted into law. However, if some sort of segregation of federally funded State contracts is inevitable as between the various minorities, it should be in accordance with a formula reasonably based on the population each is in relation to total population of all recognized disadvantaged minority groups.

Sincerely,

Debra A. Corbin

Debra A. Corbin



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2915 KAVANAUGH BLVD
LITTLE ROCK AR 72205 03AM

Western Union Mailgram

1-010239I124 05/03/88 TWX ESL62031132 WSHA
TDWX LITTLE ROCK AR

IKE SHELTON - PROCUREMENT INNOVATION
MINORITY ENTERPRISE DEVELOPMENT COMM.
B 363 RAYBURN HOUSE BUILDING
WASHINGTON DC 20515

WE ARE AWARE OF THE CONVERS AMENDMENT, SMALL BUSINESS BILL H-4174 AND ARE TOTALLY OPPOSED TO THIS AMENDMENT.

SHARON HILL, PRESIDENT
NATIONAL ASSOCIATION OF WOMEN IN CONSTRUCTION
GREATER LITTLE ROCK, CHAPTER 12
CIPA

18:05 EST

MGMCOMP

5241 (R 7-82)

TO REPLY BY MAILGRAM MESSAGE, SEE REVERSE SIDE FOR WESTERN UNION'S TOLL - FREE PHONE NUMBERS

EWL
TRUCKING, INC.
126 Hall Road • Aliquippa, PA 15001 • Phones: (412) 775-1993 / 375-1993

May 3, 1988

Mr. Russ Orban
Committee on Small Businesses
U. S. House of Representatives
Washington, DC 20515

RE: H. R. 4174

Dear Mr. Orban:

I want you to know that I am strongly opposed to the proposed amendments of Congressman John Conyers to HR 4174 concerning the suggested 3.5% /6.5% split of federal minority setaside monies.

For the past 12 years I have been President and chief management officer of EWL Trucking Company, a construction industry trucking business in Beaver County in Western Pennsylvania. My Mother owns 51% of the shares of the company; I own the rest. My Mother is a widow and I have been divorced for 8 years. We have no "behind the scenes" men helping us run the Company. We run the Company. Although it can get incredibly hectic in our warm weather busy season, we like running our own business. We are not a "front" for anybody.

The trucking business has been in our family for years. Like millions of other small American businesses, ownership of the Company was passed down to my Mother and me. Our goal has been to build the business up for our children and grandchildren. Without bragging I can say that we have succeeded so far. When we took over management of the company in 1976 there were 31 employees and 40 pieces of equipment. Now we employ 61 drivers and mechanics and own 69 pieces of equipment. As our representative in Congress can tell you, there is a 10.6% unemployment rate in Beaver County. My Mother and I are quite proud of the number of families in our area that depend on EWL for their financial support. It is a big responsibility.

Almost everybody knows that construction used to be a male-dominated industry. It still is. But the federal legislation that requires minority participation in public construction projects has opened the door a crack for women like my Mother and me. This is why I am disturbed that some people are arguing for a reduction in the opportunites for women in contruction.

I know all about the problems of women "fronting" for male-controlled construction companies. Believe me, nothing makes me angrier than having to compete against these sleazy operations. I try to do my part. When my foremen, drivers and good customers tell me about phony female companies, I complain loudly and often. I write letters to the government agencies involved. I do everything that I can. I would love to see these people behind bars, but I can't run a construction company and be a police women at the same time.

My experience is that there are even more black males who are "fronting" for white construction company owners. EWL has picked up a lot of work after these shams have been discovered or after the prime contractors have to kick them off the job site because they cannot perform. My Company satisifies prime contractors, has a fine reputation and never is bounced off the job site. The problem is that in a fiercely cost-competitive industry, my customers are tempted to cut corners by using "front" subcontractors.

In conclusion, your committee ought to make some changes in the law. But these changes should not be at the expense of legitimate female-owned and managed companies like EWL. Instead, you should change the law to make it easier to put phony "front" companies out of business. I have been complaining about some of these shams for years, but the officers I talk to say that there is not much that they can do about it. Put some teeth into the law's penalty provisions. But please don't reduce your committment to genuine female businesspeople.

Sincerely yours,

Anna L Petrella
Anna L. Petrella
President

ALP/jv

MAY 05 1988

F & B CONTRACTORS, LTD.
Route 3, Box 301
Bedford, Virginia 24523

W.B.E. CERTIFIED

703-297-4420

May 3, 1988

The Honorable Ike Shelton
United States House of Representatives
Washington, D.C. 20515

RE: BILL NO. HR-4174

Dear Sir:

As owner of a Virginia certified minority female owned business, I respectfully ask that you do not support the above mentioned bill. Passage of this legislation will only benefit non-female minorities and will be discriminatory to female owners since the bulk of the work will be taken away from us. Since passage of past legislation which made female owners equal to other minorities, I have been able to obtain two subcontracts on federal projects.

Thank you for your consideration in this matter and for your time.

Sincerely,

F & B CONTRACTORS, LTD.

Sandra B. Falls

Sandra B. Falls, President

MAY [illegible] 1988

G B S CORPORATION, INC.
P.O. BOX 100
RIPLEY, MISSISSIPPI 38663

Grace Robertson - President **Telephone 837-4127**

May 2, 1988

Mr. Ike Skelton
13363 Rayburn Office
Washington, DC 20515

Dear Mr. Skelton,

I am writing to you about my concern and total opposition to the Conyers Amendment, Bill # HR 4174, being introduced to Congress by Mr. Ike Skelton.

As a total 100% Women's Business Enterprise my company would suffer a great injustice. We would like for you to recogize that women are at a disadvantage, as much so as a minority Enterprise.

Please give this bill a great deal of thought and help the Women Owned Business so they can stay competitive.

Sincerely,

Sherry Hill

Sherry Hill
Vice-President

A Women's Business Enterprise

J S CONSTRUCTION JS
17010 ARCH ST PIKE
LITTLE ROCK AR 72206 02AM

Western Union Mailgram

4-0358518123 05/02/88 ICS IPMBNGZ CSP WHSB
5018886081 MGMB TDBN LITTLE ROCK AR 35 05-02 0413P EST

IKE SHELTON CHAIRMAN OF SUBCOMMITTEE TIMED
B363 RAYVERN OFFICE BUILDING
WASHINGTON DC 20515

I AM AWARE OF CONYERS AMENDMENT SMALL BUSINESS BILL H4174 I AM TOTALLY OPPOSED TO THIS AMENDMENT
JUDY SURRETT J S CONSTRUCTION

16:18 EST

MGMCOMP

5241 (R 7/82)

TO REPLY BY MAILGRAM MESSAGE, SEE REVERSE SIDE FOR WESTERN UNION'S TOLL - FREE PHONE NUMBERS

MAY 06 1988

P. O. Box 13306
1000 Hazel Court
Chesapeake, Va 23325
(804) 420-7170

Oakley Lane
P. O. Box 248
Richmond, Va 23075
(804) 222-6053

Kitchin Equipment Company of Virginia, Inc.

Contractors Equipment Rental
Contracting

May 03, 1988

Ike Shelton
U. S. House of Representiatives
Washington, D C. 20515

Dear Sir:

I am a Certified WBE with the Commonwealth of Virginia. I ask that you Do Not support Bill # HR4174. As the Bill will reduce White Women's percentage of participation on State and Federal Projects.
We have found it difficult enough to get our percentage of work in the past. Passage of this Bill would be detrimental to ourselves and to the future of this program.

Sincerely,

Kitchin Equipment Company of Virginia, Incorporated

Joanne K. Walski

Joanne K. Walski, President

JKW:mw

SAFE-T-FLARE RENTAL SERVICE, INC.
P.O. BOX 10648 · 436-2548 · KANSAS CITY, MISSOURI 64118

May 2, 1988

The Honorable Ike Skelton
House Small Business Committee
B363 Rayburn Building
Washington, D.C. 20515

Dear Representative Skelton:

I am writing to tell you that I am against Congressman John Conyers' ammendment to HR4174 which seeks to divide the 10% DBE set-aside between minorities and women --- 3.5% to women owned businesses and 6.5% to minorities.

I understand that your subcommittee is holding hearings on this ammendment on Wednesday, May 4, 1988. Please add this letter of opposition to the ammendment to your testimony records.

Sincerely,

Frances L. Carmack
President

OUR MOST IMPORTANT PRODUCT is "SAFETY"

Statement of Rep. Cardiss Collins before the Subcommittee on Procurement, Innovation and Minority Enterprise of the House Small Business Committee
Federal Dirksen Building
Chicago, Illinois

August 8, 1988

Mr. Chairman, I am pleased to appear before you and the distinguished members of the subcommittee. I welcome this opportunity to address an issue that is of such vital importance to the people of Chicago and the State of Illinois. That issue - how to eliminate barriers which prevent full minority participation in state highway projects - is one that requires our focused attention and concerted effort because of the myriad problems experienced by minority contractors. Those problems range from inability to obtain bonding to difficulty in receiving prompt payment for completed work. There have been other problems, too, which have effectively locked out minorities, such as the arbitrary Illinois State requirement which requires ownership of an asphalt plant on certain projects. Then, there is the issue of fronts which continues to be a perilous problem and one that must be eradicated. I will address that in more detail later in my testimony.

For over a decade now it has been the policy of the United States government to promote and assist disadvantaged businesses in order to afford those concerns access to the market place and to allow them to grow and expand. When the ten percent set-aside was added to the Local Public Works Act in 1976 it was the intent of Congress to provide greater opportunity for minority contractors on federal highway projects. As you know, under the original act women were not automatically considered disadvantaged, but could take advantage of the set-aside program, upon demonstrating that they were in fact disadvantaged. Even though women were not included, various state departments of transportation administratively set up their own set-aside above and beyond the ten percent. Generally, the separate administrative goal for women was around 3 percent. So, you had a situation where at least 3 percent of the contract dollars went to women, with 10 percent going to the people defined in the law as being eligible.

Of course, all of that changed last year when women were included in the ten percent requirement, effectively increasing the number of concerns vying for a limited pool of contracts. The one-goal system has caused considerable concern and prompted many of us in Congress to call for a return to the two-goal system.

This past April I called a hearing in the wake of the infamous Dan Ryan controversy. That project was an example of the inherent danger of a one-goal system, and the failure of the Illinois Department of Transportation to award contracts in a fair and equitable way. You will recall that over 60 percent of the subcontracts on that project went to women-owned businesses. There was only one minority subcontractor, and no minority prime contractors. Because of the groundswell of community opposition and a threatened shutdown of the Dan Ryan highway, the state was forced to provide more subcontract opportunities for minority businesses on that project. Today's hearing is a chance to determine what progress the state has made in fulfilling that promise. I applaud the subcommittee for holding this hearing in a timely fashion.

Beyond the acrimony which surrounded the Dan Ryan incident, there is the larger question of how do we ensure that the DBE program in Illinois is truly effective. At my subcommittee hearing in April Illinois State Rep. Anthony Young testified that the DBE program was a "complete and total failure." He based this on the fact that few minority firms had significantly increased their annual receipts since the inception of the program in 1982. State Rep. Wyvette Younge testified, too, that the program had failed because IDOT had not implemented it in good faith. She pointed to the $25 million Martin Luther King

Bridge project in East St. Louis where there was virtually no minority participation. The record from that hearing is replete with criticism of IDOT's implementation of the DBE program. And, those criticisms are not without foundation.

Last September I wrote the Inspector General of the U. S. Department of Transportation and asked that he investigate IDOT's performance including its certification procedure, contract performance monitoring, and program goal accomplishment. The I.G.'s report confirmed what many of us had suspected.

In general, the I.G. determined that IDOT was routinely certifying firms as "disadvantaged" with little or no effort to determine their true status. Specifically, in a random sample sixty percent of the firms certified by IDOT as disadvantaged had not provided IDOT with the documentation required by IDOT's own regulations concerning such factors as ethnicity, capital contribution, technical expertise, and so forth. The likely consequences of such lax procedures are obvious: it provides a window of opportunity for fraudulent DBE firms to get through and obtain contracts. For example, one contractor had been certified as a minority every year since 1983 without IDOT documenting the fact that the contractor was indeed a minority.

In another case, the registered owner of a construction company was determined to be unable to read or write. Of course, this goes directly to the owner's ability to operate the firm on a daily basis. In still another case, the I.G.'s investigation revealed a purported female owner with no documented construction experience nor expertise whatsoever, and whose husband just happened to be in the business.

Again, according to the I.G., the prevalence of such suspect certifications are attributable to IDOT's having "rarely performed" on-site inspections to verify the true status of certified firms, including those whose written submissions were questionable on their face.

I also requested that the I.G. review IDOT's monitoring of the supportive services contracts to ensure that funds are being efficiently used to provide meaningful training opportunities for minorities, women and disadvantaged businesses.

Once again, the I.G. found IDOT's procedures to be lacking. For instance, the I.G. found that an individual had been placed in the OJT program even though he owned his own firm, was a journeyman, and had substantial experience in the construction industry. The I.G. also discovered other instances of placement of experienced and non-minority individuals. As a result, experienced individuals filled training slots intended for inexperienced minorities and women. These conditions occurred because IDOT did not verify the accuracy of placements and has not established adequate controls to ensure that targeted individuals are being placed in the program.

In sum, the I.G.'s investigation underscores the fact that the problem is not so much the lack of good law and regulation at the state or federal level, as it is IDOT's lax certification process which can only invite and encourage the establishment of fronts.

In conclusion, Mr. Chairman, it is clear to me that the state needs to work more diligently to ensure the integrity of IDOT's certification process for disadvantaged firms. In addition, while we in the Congress debate the issue of returning to the two-goal system there has to be a focused effort to make sure that contracts are doled out in a fair and equitable way. I have asked the General Accounting Office to monitor selected states in their implementation of the one-goal system. I want to know who is getting contracts and how much. And, I want to be able to compare the previous experience under the two-goal method with what is occurring now. That will allow us to make a realistic assessment of the best way in which to operate the program.

***

TESTIMONY OF SIMONE KAPOVICH
PRESIDENT, ILLINOIS ASSOCIATION OF WOMEN CONTRACTORS AND ENTREPRENEURS

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS
SUB-COMMITTEE OR PROCUREMENT,
INNOVATION AND MINORITY ENTERPRISE DEVELOPMENT

CHICAGO, ILLINOIS
AUGUST 8, 1988

Mr. Chairman, Members of the Sub-Committee:

My name is Simone Kapovich and I am the President of the Illinois Association of Women Contractors and Entrepreneurs. I am also President of S & J Construction of South Holland, Illinois. My testimony today is on behalf of the Illinois Association of Women Contractors and Entrepreneurs. This association is a state-wide organization with approximately 52 members from all parts of the State. Our members include both prime and sub-contractors from almost every discipline of construction.

Goals of the Association include:

1. Building a network to assist women in dealing with the complexities and difficulties facing small businesses.
2. To promote the role of women business enterprises and entrepreneurs.
3. To monitor and participate in legislative and administrative changes which effect women in construction.
4. Encourage participation in and out of the state and federal agencies.
5. Development of opportunities and providing corridors of opportunities for women.

I have enclosed a brochure (Attachment I), which gives greater detail into the philosophy and purpose of the Association.

PURPOSE OF THE TESTIMONY

This testimony is for the purposes outlined in the Committees letter dated July 29, 1988. The purpose of our involvement here today is to discuss:

1. The impact of existing law on small disadvantaged businesses, both minority and women owned.
2. Review of current proposals that would change existing law:
    a. Federally mandated set-asides be increased , or
    b. Allocated between presumptively disadvantaged groups.
3. Actions that the federal or state governments should take to enhance the program.

BACKGROUND INFORMATION ON ILLINOIS

To our knowledge, the only study which has been done concerning demographics of DBE/WBE firms in Illinois, was performed by F. H. Uhlig & Associates, a Springfield, Illinois based consulting firm. This study was completed March 31, 1986. Although it is dated, since it is the only study available, we will use it as a source for the following information.

Minorities VS. Total Population

The number of minorities in the State of Illinois, compared to total population, indicates a severe shortage of minorities statewide, with the exception of the City of Chicago. Attachment II illustrates a statewide ratio of 20% minorities. However, if the City of Chicago is removed from the base, the statewide percentage is 5.5%. The State of Illinois is split into nine highway districts. The percentages of minorities by district shows a severe problem of availability downstate. Attachment III indicates percentages as follows:

District 1 - 28.0% (Excluding Chicago - 4.2%)
District 2 - 6.9%
District 3 - 5.9%
District 4 - 6.3%
District 5 - 7.2%
District 6 - 3.7%
District 7 - 2.1%
District 8 - 14.0%
District 9 - 6.4%

Minorities in Construction

According to the 1980 Census, 17,367 minorities are employed in construction. Construction includes many types of building and not solely road construction. If figures were available for "road construction" these figures would be considerably lower. Of a total population of 11,103,745 only 17,367 minorities or .15% are employed in construction. Using the most liberal comparison, 17,367 of the 2,484,473 minorities in the state are employed in construction. This represents that only .69% of all minorities are in construction.

An examination of the breakdown of minorities in construction by highway district indicates the following:

District 1 - .19%
District 2 - .04%
District 3 - .06%
District 4 - .08%
District 5 - .08%
District 6 - .06%
District 7 - .02%
District 8 - .14%
District 9 - .07%

In no highway districts in the State of Illinois does the percentage of minorities in construction equal even 1% of the total population.

Number of Certified DBE/WBE Firms

As of January 10, 1986, there were 314 certified DBE's and 115 WBE's. Of these, 29 DBE and 19 WBE were non-construction related. Therefore, leaving a total of 285 DBE and 96 WBE certified firms. Almost half of these firms are located in Cook County. Attachment IV illustrates the availability of certified firms by highway district. The maps indicate the following:

	DBE	WBE
District 1	173	53
District 2	13	5
District 3	5	5
District 4	14	6
District 5	12	3
District 6	15	6
District 7	1	3
District 8	35	13
District 9	10	6

In District 2, there are 7 counties with no certified DBE or WBE firms. District 3 has 8 counties with zero DBE firms and 7 counties with zero WBE firms. District 4 has 6 counties with zero DBE and 6 with zero WBE. District 5 has 8 counties with zero DBE and 10 counties with zero WBE's. District 6 has 9 counties with zero DBE's and 10 counties with zero WBE's. District 7 has 13 counties with zero DBE's and 11 counties with zero WBE's. District 8 has 7 counties with zero DBE's and zero WBE's. These figures are illustrated below:

District	# Counties with no certified DBE	# of Counties with no certified WBE	Total # Counties in Dist.
1	0	2	6
2	7	7	12
3	8	7	11
4	6	6	9
5	8	10	12
6	9	10	15
7	13	11	14
8	7	7	10
9	10	10	13

Therefore, out of 102 counties, only 28 have certified DBE firms and only 31 have certified WBE firms. It should be pointed out that the Illinois Department of Transportation (IDOT) has been erratic in its certification or minority firms. IDOT records indicate that the number of certified firms were as follows:

Date	# DBE	# WBE	#DBE/WBE	TOTAL
October, 1982	166	139	16	321
June, 1983	296	168	26	490
September, 1983	292	161	24	477
December 1983	329	171	25	525
February, 1984	287	166	18	468
January, 1985	294	113	21	428
March, 1985	251	89	14	354
May, 1985	277	84	17	378
January, 1986	314	115		429

From the constant variance of the above numbers of certified firms, it is extremely difficult for prime contractors to know who and how many firms are available at any given point in time.

Comparison of DBE/WBE Firms and Road Programs

The State of Illinois will spend approximately $890 million on the FY '86 road program (July 1, 1985 through June 30, 1986). The 10% DBE participation requirement amounts to approximately $89 million. The WBE requirement of 3.5% will amount to $31.1 million. The following represents the road program by Highway District and an average share of the program based on certified firms:

Dist	Program $	%DBE	%WBE	# DBE/WBE	Avg. Share Program/firm
1	348m	34.8m	12.8m	132/41	264K/312K
2	76m	7.6m	2.6m	13/5	584K/520K
3	74m	7.4m	2.5m	5/5	1,400m/500K
4	54m	5.4m	1.8m	14/6	385K/300K
5	60m	6.0m	2.1m	12/3	500K/700K
6	97m	9.7m	3.3m	15/6	647K/550K
7	40m	4.0m	1.4m	1/3	4m/466K
8	112m	11.2m	3.9m	35/13	320K/300K
9	29m	2.9m	1.0m	10/6	290K/166K
	890m	89.0m	31.1m		

FEDERAL LAW AND PROPOSED CHANGES

Two Goal System

It is proposed that the program requirements revert back to the two goal system, that being a separate goal for DBE firms and WBE firms. The Illinois Association of Women Contractors and Entrepreneurs conducted a survey regarding this particular issue. The survey and results are included as Attachment V. The results of the survey indicated that, of those responding, 76.1% favored the one goal system and, therefore, opposed the two goal system.

It is our Association's opinion that the current system fosters competition for construction work, which produces the best awards at the best price for the agencies involved. In order to be low bidder, the firm has to present the best package, meeting the required specifications. Under this system, governmental entities and taxpayers can get the most for their money.

Women contractors have been aggressive and highly competitive in the construction industry. As a result, they have been successful in getting contracts and have increased their market share in the industry. We do not believe that their reward for hard work be to lower their goal.

In further support of this position, the following quote is from a position paper dated 5/87 from the Women Construction

Owners and Executives, USA, which has approximately 180 members nationwide:

> WBE Construction Procurement
> "Initially our position advocated separate WBE and MBE goals to enhance equal access to construction procurement dollars. However, since the Surface Transportation and Uniform Relocation Assistance Act of 1987 has been enacted with a combined goal for WBE's and MBE's, we seek to have the combined goals raised."

We would submit, that both a State of Illinois Association and a National Association support a one goal system; and, would, therefore, recommend to this committee, that the present system not be changed.

NEEDED IMPROVEMENTS TO THE EXISTING PROGRAM

Bonding and Finance

Legitimate DBE's and WBE's find it very difficult to obtain bonding and sufficient working capital. This creates a problem for WBE's as well as prime contractors who are required to include these firms in their project subcontracting.

This is especially true for women owned businesses. In many cases, banks or lending institutions require that their spouses co-sign on loans or notes. If this is done, the WBE runs the very real risk of being de-certified. Thus, they are in a "Catch 22" situation. Since the purpose of the program was, and we believe still is, to foster minority participation in the construction field, the "system" in fact discourages, or makes it impossible, for them to participate. Possible solutions to this problem may include:

1. The state or federal government could guarantee payment and performance bonds for certified firms, or

   Could guarantee payment to firm suppliers.

2. Establish a program of advance payments to certified firms to meet immediate financial requirements, with or without interest.

3. Create a business development program of loans or lines of credit at a low interest basis. These loans, etc. could be conditioned on actual contract awards.

Failure of a Certified Firm to Perform

We would support program criteria for the termination of any certified firm who fails to perform their portion of a contract. Guidelines would need to be established letting every firm know in advance the "rules". We believe if a firm does not have the expertise and ability to successfully complete a job, it has agreed to, that they no longer be eligible to participate in the program, until proper corrections in firm management, expertise, etc. be made.

Goals Based on Availability of Certified Firms

The Association believes that goals should be based on availability of certified firms, as well as, the types of work included in the project. As we have seen from the demographic study done in Illinois, there are many areas in the State which lack the numbers of certified firms to reach the goals set.

Proper goal determination would help ensure legitimate firms getting work and would also prevent over extension of firms due to the amount of work given them. As in any business, it is dangerous to grow "too big too fast" and can result in the ultimate failure of a company.

Elimination of "Bid Shopping"

Bid shopping, by prime contractors, often results in minority firms accepting work at a less than break-even price. The Federal, State and local governments have already determined that the best manner in which to award construction contracts is through the sealed bid process. It, therefore, stands to reason, that this same principle should be extended to sub-contracts. This would foster legitimate competition and should result in a fair price for the work to be completed. We, therefore, believe that the federal and state governments establish regulations to eliminate bid shopping.

Guidelines on Industry Practices

Guidelines need to be established on accepted industry practices. Some of the guidelines needed include (but are not limited to):

1. Carrying of subcontractors payroll by the prime contractor.
2. Sub-contractors who remain employees of another firm while establishing their own business.
3. Equipment leasing.

4. Sharing of office space and facilities.
5. Spouses or children employed by the firm.

Problems with the issues outlined above are often encountered in the certification process. There appears to be a double standard in the construction industry. Prime contractors are allowed to hire whom they wish, have offices where they wish, help carry a payroll for a non-minority sub, etc. However, if these practices are done with a minority firm, it is automatically assumed, that the firm is a "sham or front". We believe that if guidelines were established, based on common industry practice, that many of these double standards would be eliminated.

CONCLUSION

We would like to thank the Sub-Committee for the opportunity to share our views on the program with you. Our recommendations are designed to help strengthen this program and we would respectfully request that the committee consider our views in their future deliberations. I would be pleased to answer any questions from the members.

ATTACHMENT II

TABULATIONS

T = TOTAL POPULATION
M = # MINORITIES
% = PERCENTAGE of MINORITIES
to total population

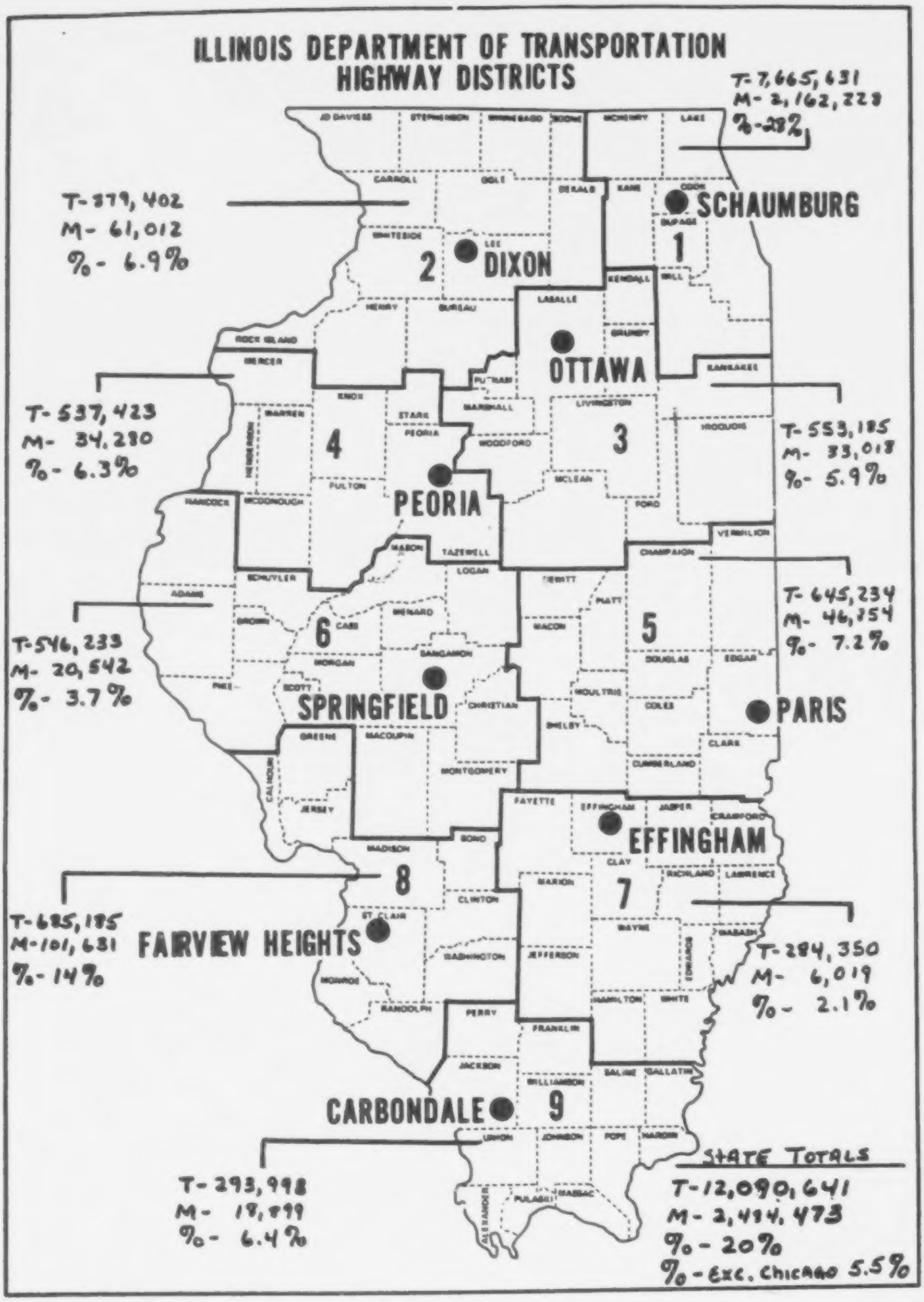
TOTAL SUMMARIES:

DISTRICT 1 -	T - 7,665,631	m - 2,162,228
DISTRICT 2 -	879,402	61,012
DISTRICT 3 -	553,185	33,018
DISTRICT 4 -	537,423	34,280
DISTRICT 5 -	645,234	46,854
DISTRICT 6 -	546,233	20,542
DISTRICT 7 -	284,350	6,019
DISTRICT 8 -	685,185	101,631
DISTRICT 9 -	293,998	18,889
TOTALS State Wide -	12,090,641	2,484,473

% STATEWIDE - 20%

TOTAL Chicago	1,916,024

% EXCLUDING Chgo - 5.5%


JO DAVIESS
STEPHENSON
WINNEBAGO
BOONE
MCHENRY
LAKE
CARROLL
OGLE
DEKALB
KANE
COOK
DUPAGE
WHITESIDE
LEE
SCHAUMBURG
1
2
DIXON
KENDALL
WILL
HENRY
BUREAU
LASALLE
GRUNDY
ROCK ISLAND
OTTAWA
MERCER
PUTNAM
KANKAKEE
KNOX
STARK
MARSHALL
LIVINGSTON
WARREN
HENDERSON
PEORIA
IROQUOIS
4
WOODFORD
3
MCLEAN
FULTON
HANCOCK
MCDONOUGH
PEORIA
FORD
VERMILION
MASON
TAZEWELL
CHAMPAIGN
SCHUYLER
LOGAN
DEWITT
PIATT
ADAMS
BROWN
CASS
MENARD
6
MACON
5
SANGAMON
MORGAN
DOUGLAS
EDGAR
PIKE
SCOTT
MOULTRIE
SPRINGFIELD
CHRISTIAN
COLES
PARIS
SHELBY
GREENE
MACOUPIN
CLARK
CALHOUN
MONTGOMERY
CUMBERLAND
FAYETTE
EFFINGHAM
JASPER
CRAWFORD
JERSEY
EFFINGHAM
MADISON
BOND
CLAY
8
RICHLAND
LAWRENCE
MARION
7
CLINTON
ST. CLAIR
FAIRVIEW HEIGHTS
WAYNE
WABASH
WASHINGTON
JEFFERSON
EDWARDS
MONROE
HAMILTON
WHITE
RANDOLPH
PERRY
FRANKLIN
JACKSON
SALINE
GALLATIN
WILLIAMSON
CARBONDALE
9
UNION
JOHNSON
POPE
HARDIN
ALEXANDER
PULASKI
MASSAC

ILLINOIS DEPARTMENT OF TRANSPORTATION
HIGHWAY DISTRICTS

T-7,665,631
M-2,162,228
%-28%

T-879,402
M-61,012
%-6.9%

T-537,423
M-34,280
%-6.3%

T-553,185
M-33,018
%-5.9%

T-645,234
M-46,854
%-7.2%

T-546,233
M-20,542
%-3.7%

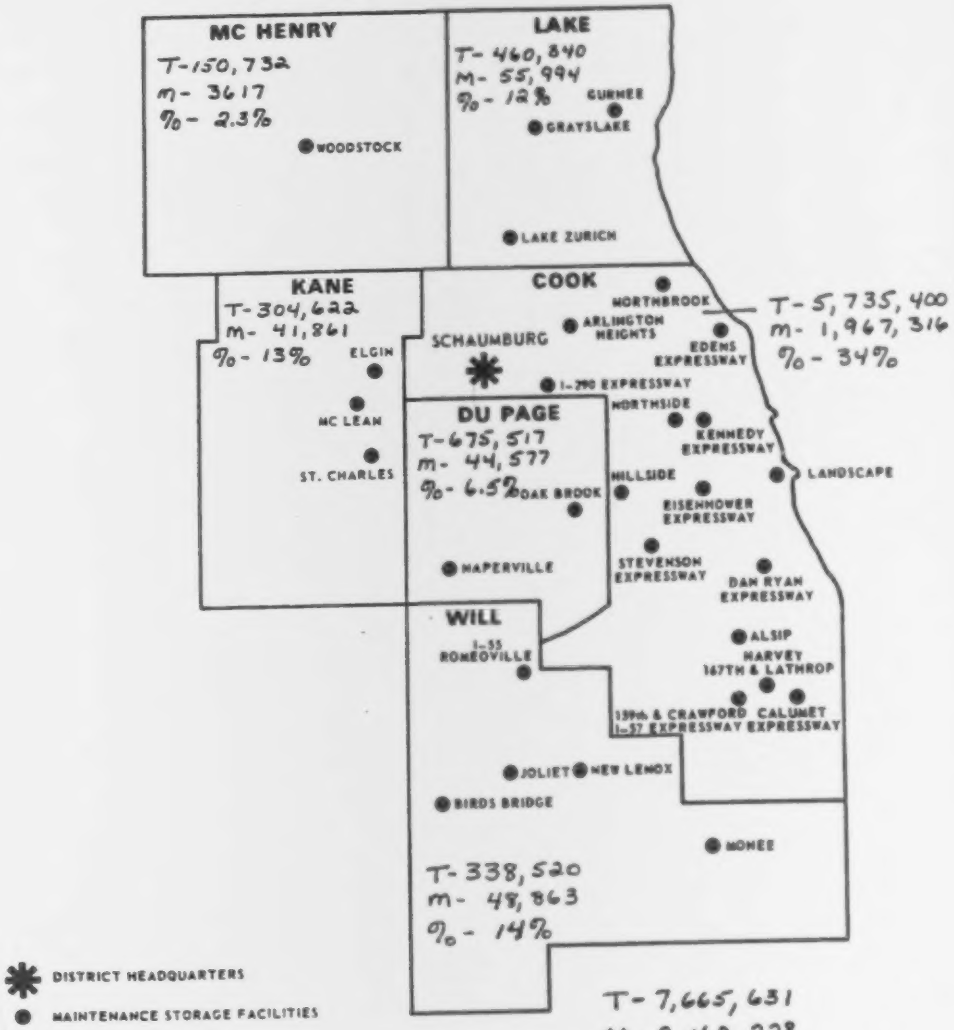
T-685,185
M-101,631
%-14%

T-284,350
M-6,019
%-2.1%

T-293,998
M-18,899
%-6.4%

STATE TOTALS
T-12,090,641
M-2,484,473
%-20%
%-Exc. Chicago 5.5%

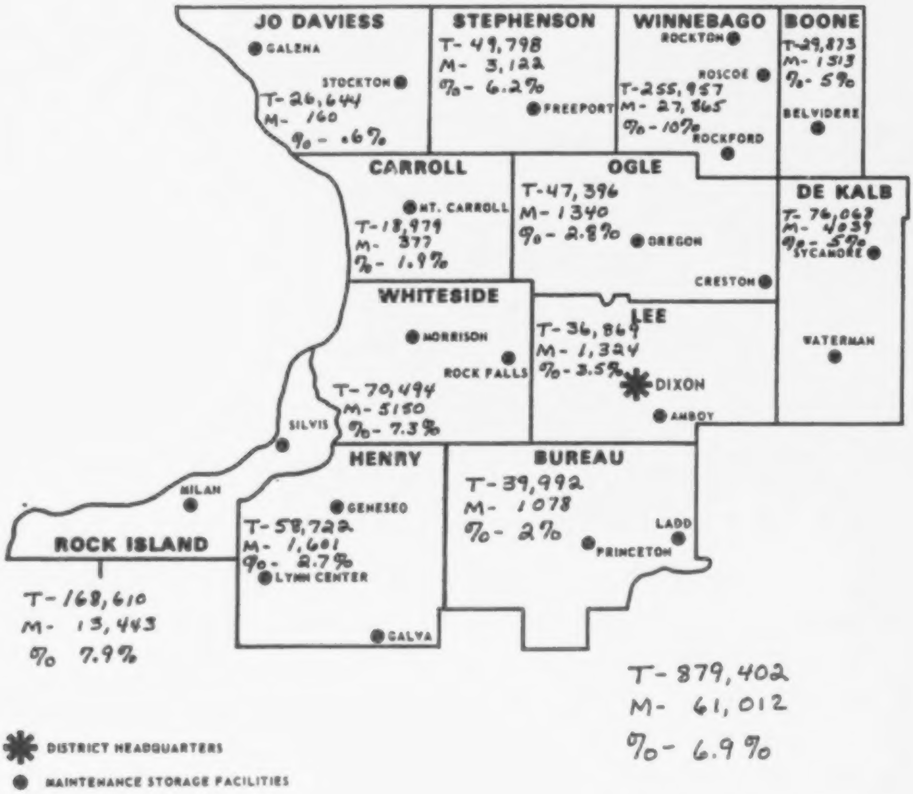
DISTRICT 1


MC HENRY
T-150,732
m- 3617
%- 2.3%
WOODSTOCK
LAKE
T- 460,840
M- 55,994
%- 12%
GURNEE
GRAYSLAKE
LAKE ZURICH
KANE
T-304,622
m- 41,861
%- 13%
ELGIN
MC LEAN
ST. CHARLES
COOK
NORTHBROOK
ARLINGTON HEIGHTS
EDENS EXPRESSWAY
T-5,735,400
m- 1,967,316
%- 34%
SCHAUMBURG
I-290 EXPRESSWAY
NORTHSIDE
KENNEDY EXPRESSWAY
LANDSCAPE
HILLSIDE
EISENHOWER EXPRESSWAY
STEVENSON EXPRESSWAY
DAN RYAN EXPRESSWAY
ALSIP
HARVEY 167TH & LATHROP
159th & CRAWFORD I-57 EXPRESSWAY
CALUMET EXPRESSWAY
DU PAGE
T-675,517
m- 44,577
%- 6.5%
OAK BROOK
NAPERVILLE
WILL
I-55 ROMEOVILLE
JOLIET
NEW LENOX
BIRDS BRIDGE
MONEE
T- 338,520
m- 48,863
%- 14%
DISTRICT HEADQUARTERS
MAINTENANCE STORAGE FACILITIES

T- 7,665,631
M- 2,162,228
%- 28%

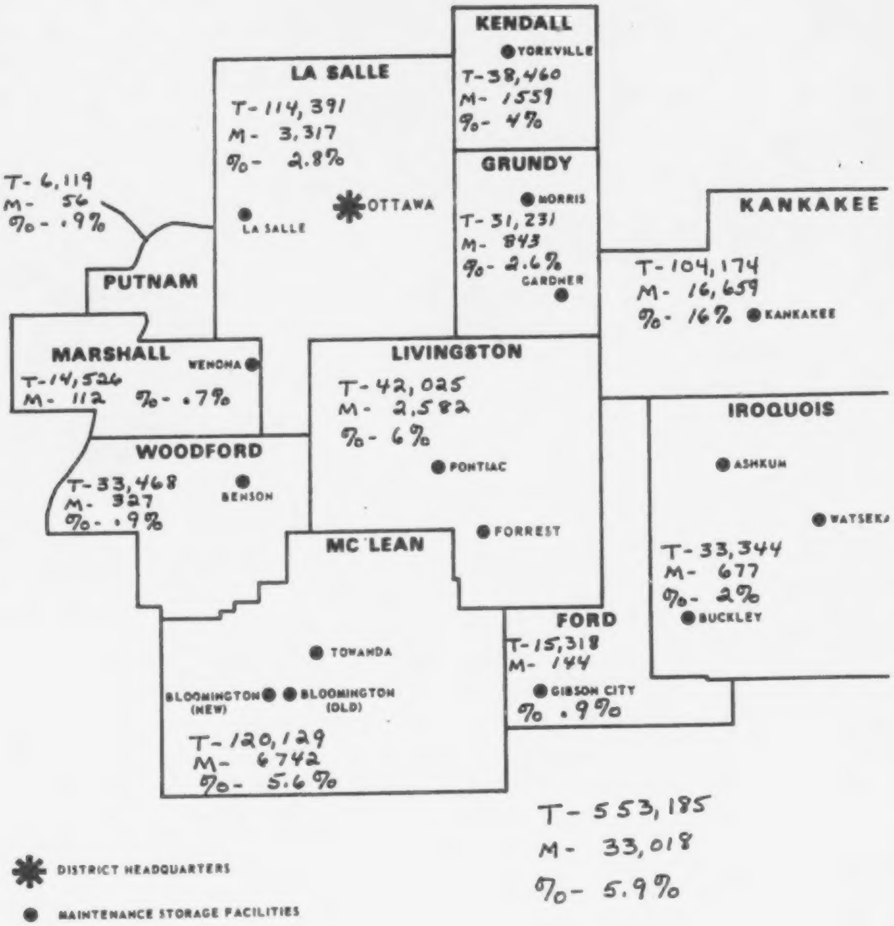
EXCLUDING CHICAGO
T- 5,749,607
M- 246,204 %- 4.2%

DISTRICT 2


JO DAVIESS
GALENA
STOCKTON
T-26,644
M- 160
%- .6%
STEPHENSON
T- 49,798
M- 3,122
%- 6.2%
FREEPORT
WINNEBAGO
ROCKTON
ROSCOE
T-255,957
M- 27,865
%-10%
ROCKFORD
BOONE
T-29,873
M- 1513
%- 5%
BELVIDERE
CARROLL
MT. CARROLL
T-18,979
M- 377
%- 1.9%
OGLE
T-47,396
M- 1340
%- 2.8%
OREGON
CRESTON
DE KALB
T- 76,068
M- 4039
%- 5%
SYCAMORE
WATERMAN
WHITESIDE
MORRISON
ROCK FALLS
T-70,494
M-5150
%- 7.3%
LEE
T-36,869
M- 1,324
%- 3.5%
DIXON
AMBOY
SILVIS
MILAN
HENRY
GENESEO
T-58,722
M- 1,601
%- 2.7%
LYNN CENTER
GALVA
BUREAU
T-39,992
M- 1078
%- 2%
LADD
PRINCETON
ROCK ISLAND
T-168,610
M- 13,443
% 7.9%
DISTRICT HEADQUARTERS
MAINTENANCE STORAGE FACILITIES

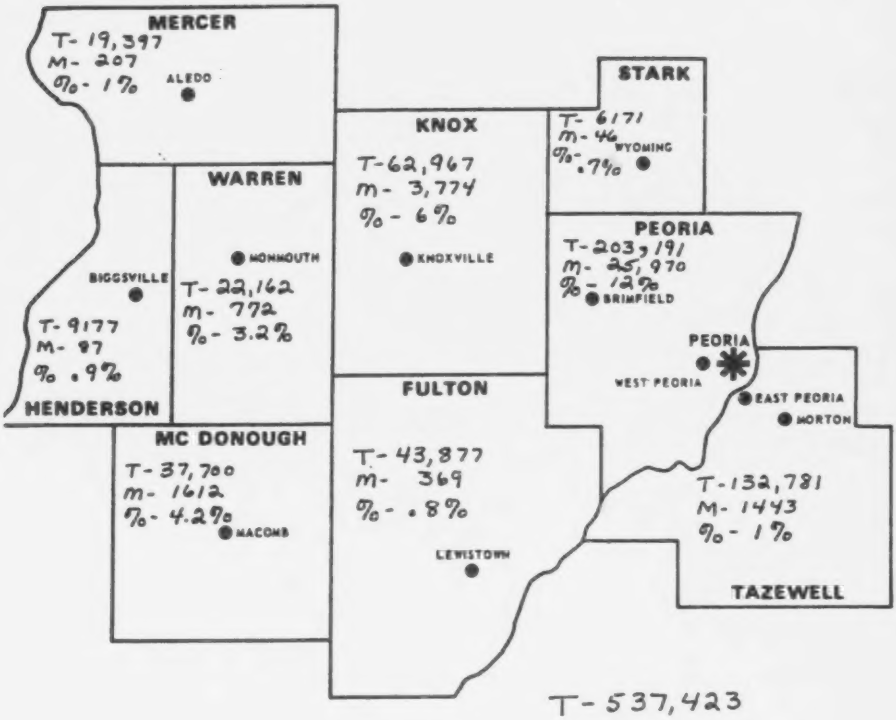
T- 879,402
M- 61,012
%- 6.9%

DISTRICT 3


KENDALL
YORKVILLE
T-38,460
M- 1559
%- 4%
LA SALLE
T-114,391
M- 3,317
%- 2.8%
T-6,119
M- 56
%- .9%
OTTAWA
LA SALLE
GRUNDY
MORRIS
T-31,231
M- 843
%- 2.6%
GARDNER
KANKAKEE
T-104,174
M- 16,659
%- 16%
KANKAKEE
PUTNAM
MARSHALL
WENONA
T-14,526
M- 112 %- .7%
LIVINGSTON
T-42,025
M- 2,582
%- 6%
PONTIAC
FORREST
WOODFORD
T-33,468
M- 327
%- .9%
BENSON
IROQUOIS
ASHKUM
WATSEKA
T-33,344
M- 677
%- 2%
BUCKLEY
MC LEAN
TOWANDA
BLOOMINGTON (NEW)
BLOOMINGTON (OLD)
T-120,129
M- 6742
%- 5.6%
FORD
T-15,318
M- 144
GIBSON CITY
% .9%
DISTRICT HEADQUARTERS
MAINTENANCE STORAGE FACILITIES

T- 553,185
M- 33,018
%- 5.9%

DISTRICT 4

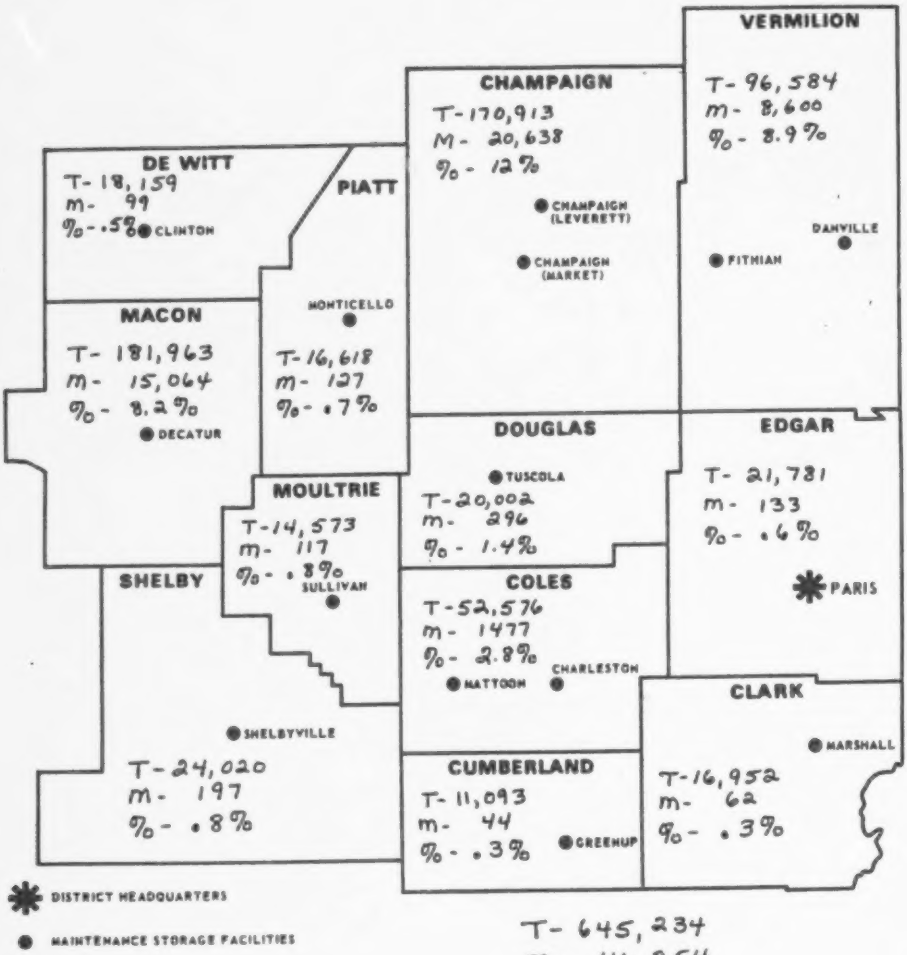

MERCER
T- 19,397
M- 207
%- 1%
ALEDO
STARK
T- 6171
m- 46
WYOMING
%- .7%
KNOX
T-62,967
m- 3,774
%- 6%
KNOXVILLE
WARREN
MONMOUTH
T- 22,162
m- 772
%- 3.2%
BIGGSVILLE
T- 9177
M- 87
% .9%
HENDERSON
PEORIA
T- 203,191
m- 25,970
%- 12%
BRIMFIELD
PEORIA
WEST PEORIA
EAST PEORIA
MORTON
MC DONOUGH
T- 37,700
m- 1612
%- 4.2%
MACOMB
FULTON
T- 43,877
m- 369
%- .8%
LEWISTOWN
T- 132,781
M- 1443
%- 1%
TAZEWELL

T- 537,423
M- 34,280
%- 6.3%

✱ DISTRICT HEADQUARTERS

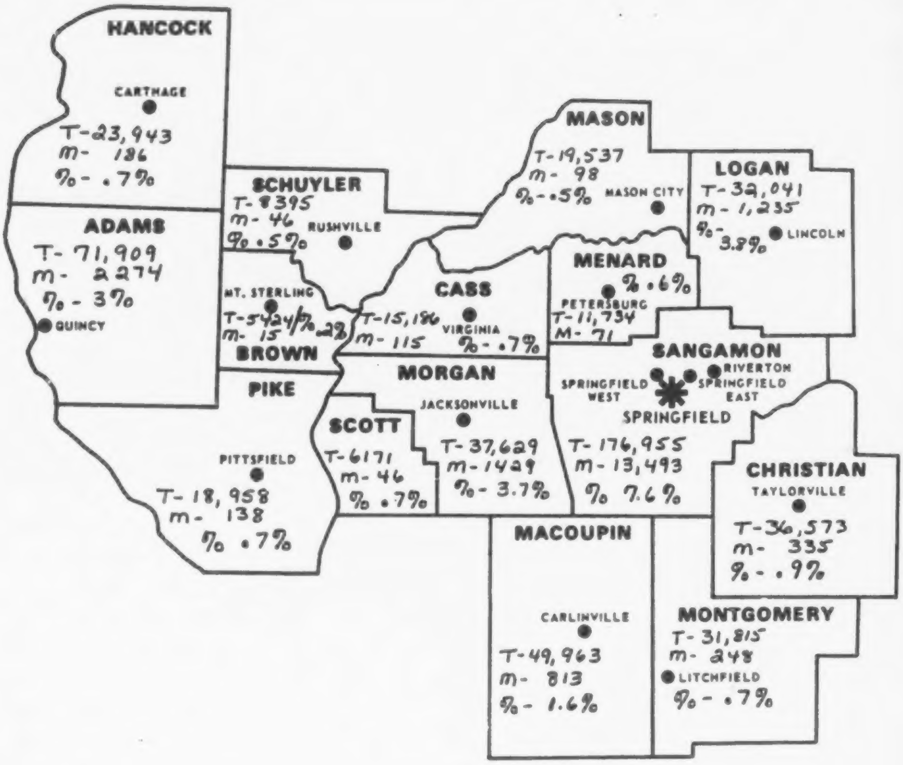
● MAINTENANCE STORAGE FACILITIES

DISTRICT 5


VERMILION
T- 96,584
m- 8,600
%- 8.9%
CHAMPAIGN
T-170,913
M- 20,638
%- 12%
CHAMPAIGN (LEVERETT)
CHAMPAIGN (MARKET)
DANVILLE
FITHIAN
DE WITT
T- 18,159
m- 99
%- .5%
CLINTON
PIATT
MONTICELLO
T-16,618
m- 127
%- .7%
MACON
T- 181,963
m- 15,064
%- 8.2%
DECATUR
DOUGLAS
TUSCOLA
T-20,002
m- 296
%- 1.4%
EDGAR
T- 21,781
m- 133
%- .6%
PARIS
MOULTRIE
T-14,573
m- 117
%- .8%
SULLIVAN
SHELBY
COLES
T-52,576
m- 1477
%- 2.8%
MATTOON
CHARLESTON
CLARK
MARSHALL
SHELBYVILLE
T-24,020
m- 197
%- .8%
CUMBERLAND
T- 11,093
m- 44
%- .3%
GREENUP
T-16,952
m- 62
%- .3%
✱ DISTRICT HEADQUARTERS
● MAINTENANCE STORAGE FACILITIES

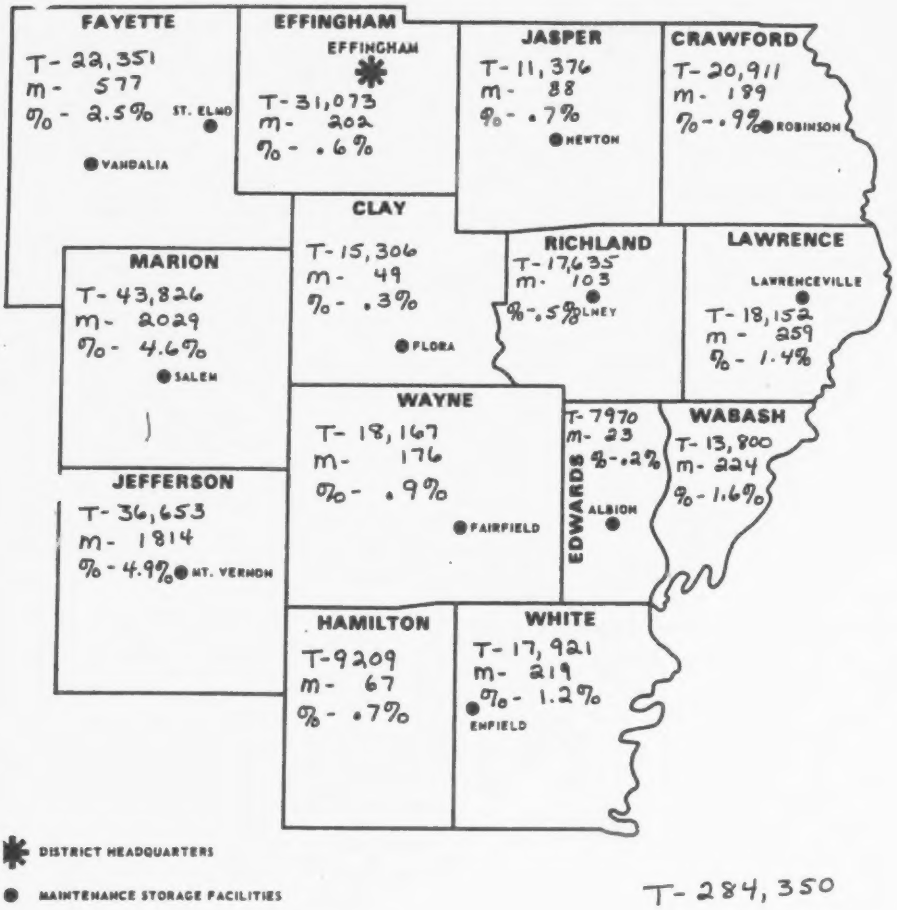
T- 645,234
m- 46,854
%- 7.2%

DISTRICT 6


HANCOCK
CARTHAGE
T-23,943
m- 186
%- .7%
ADAMS
T- 71,909
m- 2274
% - 3%
QUINCY
SCHUYLER
T- 8395
m- 46
% .5%
RUSHVILLE
MT. STERLING
T-5424/% .28
m- 15
BROWN
PIKE
PITTSFIELD
T- 18,958
m- 138
% .7%
SCOTT
T-6171
m- 46
% .7%
CASS
T-15,186
m- 115
VIRGINIA
%- .7%
MORGAN
JACKSONVILLE
T- 37,629
m- 1429
%- 3.7%
MASON
T- 19,537
m- 98
%- .5%
MASON CITY
MENARD
% .6%
PETERSBURG
T- 11,734
M- 71
LOGAN
T- 32,041
m- 1,235
%- 3.8%
LINCOLN
SANGAMON
RIVERTON
SPRINGFIELD WEST
SPRINGFIELD EAST
SPRINGFIELD
T- 176,955
m- 13,493
% 7.6%
CHRISTIAN
TAYLORVILLE
T- 36,573
m- 335
%- .9%
MACOUPIN
CARLINVILLE
T- 49,963
m- 813
%- 1.6%
MONTGOMERY
T- 31,815
m- 248
LITCHFIELD
%- .7%
✱ DISTRICT HEADQUARTERS
● MAINTENANCE STORAGE FACILITIES

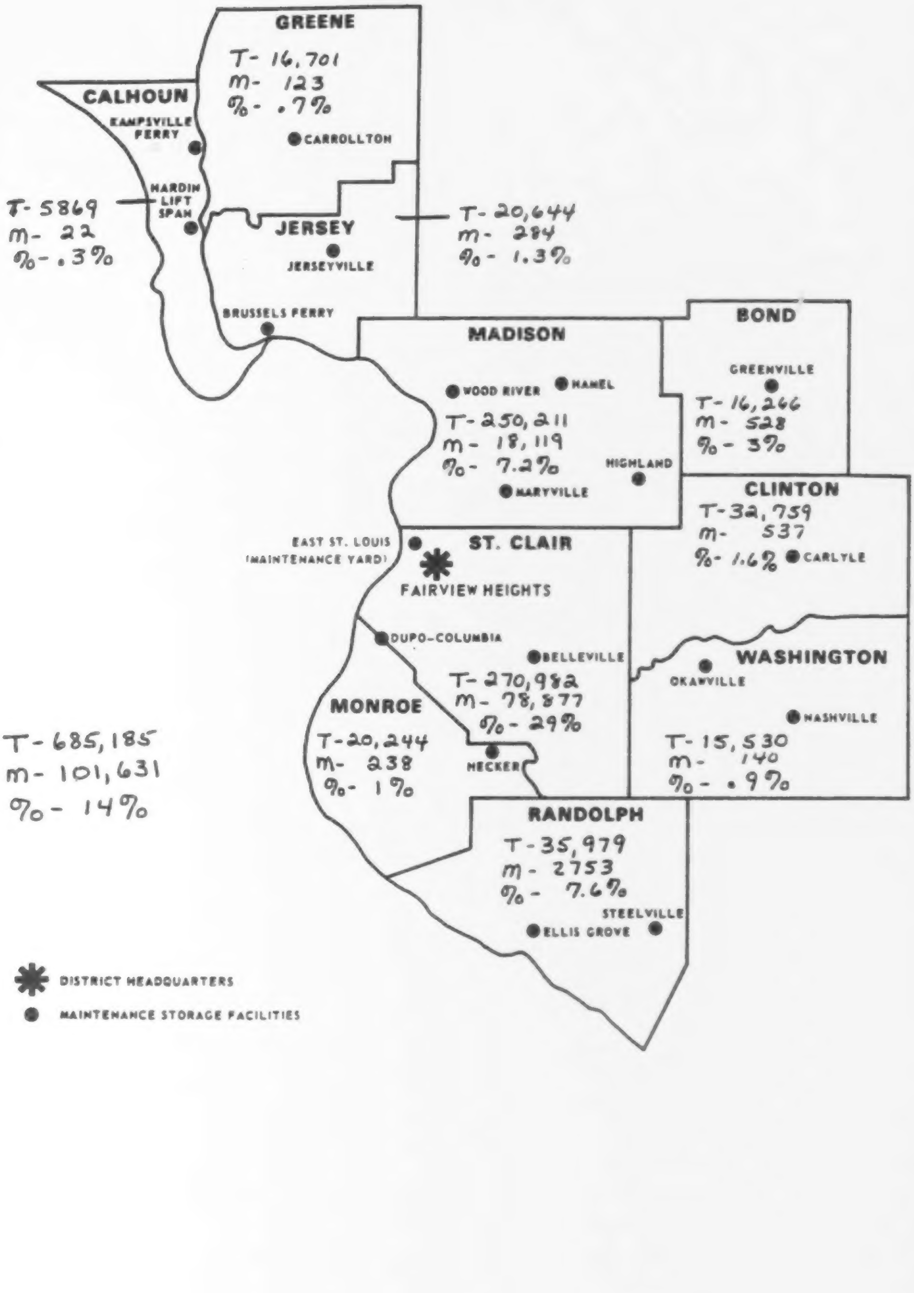
T- 546,233
M- 20,542
%- 3.7%

DISTRICT 7

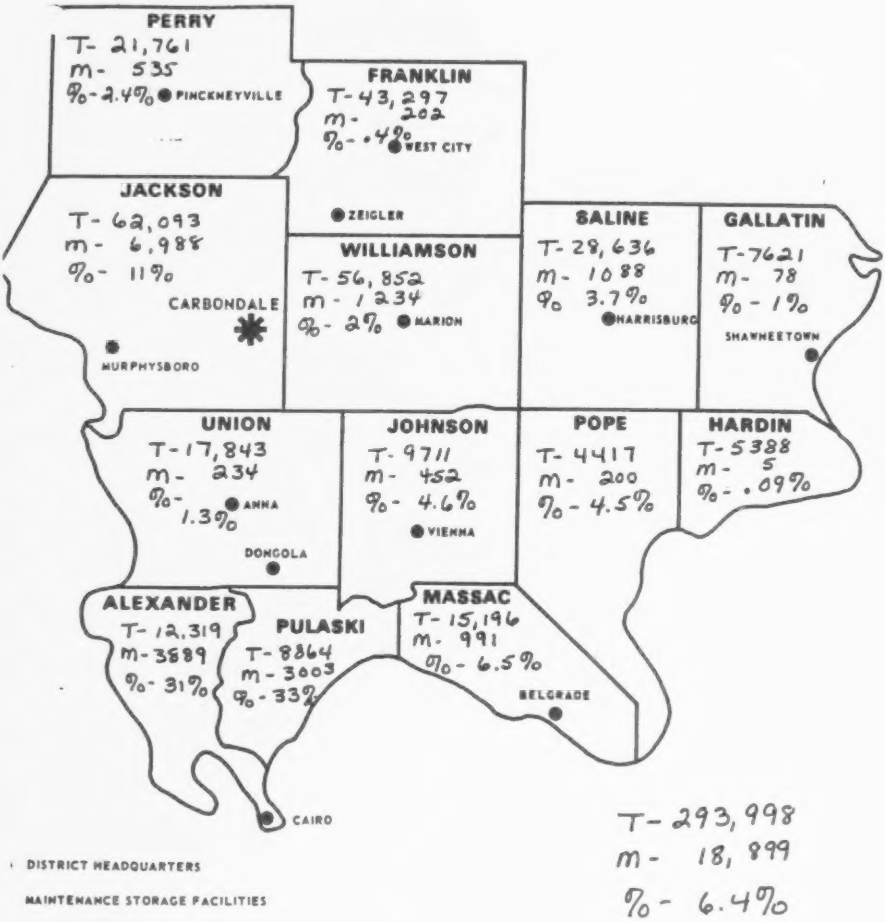

FAYETTE
T- 22,351
m- 577
% - 2.5%
ST. ELMO
VANDALIA
EFFINGHAM
EFFINGHAM
T- 31,073
m- 202
% - .6%
JASPER
T- 11,376
m- 88
% - .7%
NEWTON
CRAWFORD
T- 20,911
m- 189
% - .9%
ROBINSON
CLAY
T- 15,306
m- 49
% - .3%
FLORA
MARION
T- 43,826
m- 2029
% - 4.6%
SALEM
RICHLAND
T- 17,635
m- 103
% - .5%
OLNEY
LAWRENCE
LAWRENCEVILLE
T- 18,152
m- 259
% - 1.4%
WAYNE
T- 18,167
m- 176
% - .9%
FAIRFIELD
EDWARDS
T- 7970
m- 23
% - .2%
ALBION
WABASH
T- 13,800
m- 224
% - 1.6%
JEFFERSON
T- 36,653
m- 1814
% - 4.9%
MT. VERNON
HAMILTON
T-9209
m- 67
% - .7%
WHITE
T- 17,921
m- 219
% - 1.2%
ENFIELD
DISTRICT HEADQUARTERS
MAINTENANCE STORAGE FACILITIES

T- 284,350
m- 6,019
% - 2.1%

DISTRICT 8


GREENE
T- 16,701
m- 123
%- .7%
CARROLLTON
CALHOUN
KAMPSVILLE FERRY
HARDIN LIFT SPAN
T- 5869
m- 22
%- .3%
JERSEY
JERSEYVILLE
T- 20,644
m- 284
%- 1.3%
BRUSSELS FERRY
MADISON
WOOD RIVER
HAMEL
T- 250,211
m- 18,119
%- 7.2%
HIGHLAND
MARYVILLE
BOND
GREENVILLE
T- 16,266
m- 528
%- 3%
CLINTON
T- 32,759
m- 537
%- 1.6%
CARLYLE
EAST ST. LOUIS (MAINTENANCE YARD)
ST. CLAIR
FAIRVIEW HEIGHTS
DUPO-COLUMBIA
BELLEVILLE
T- 270,982
m- 78,877
%- 29%
WASHINGTON
OKAWVILLE
NASHVILLE
T- 15,530
m- 140
%- .9%
MONROE
T- 20,244
m- 238
%- 1%
HECKER
T- 685,185
m- 101,631
%- 14%
RANDOLPH
T- 35,979
m- 2753
%- 7.6%
STEELVILLE
ELLIS GROVE
DISTRICT HEADQUARTERS
MAINTENANCE STORAGE FACILITIES

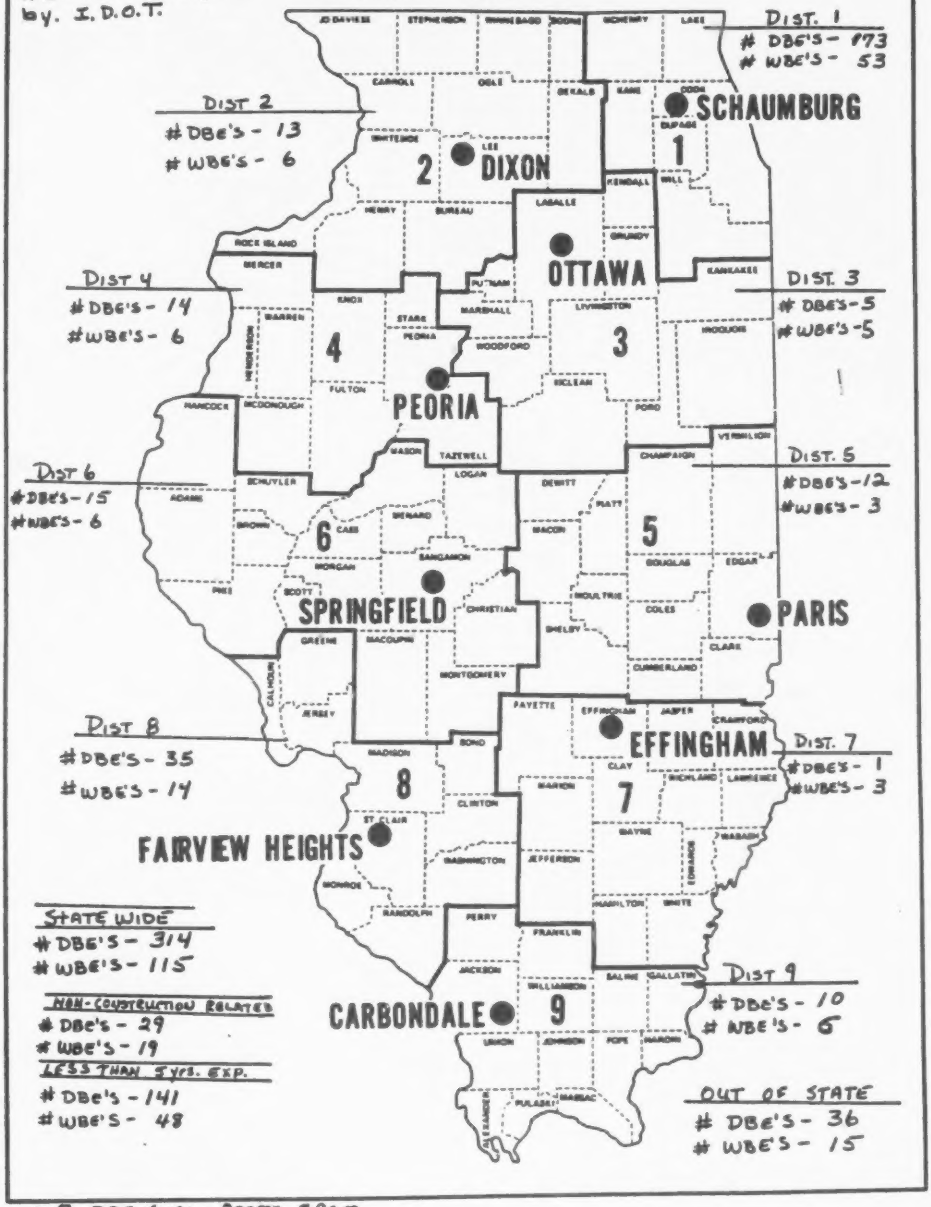
DISTRICT 9


PERRY
T- 21,761
m- 535
%-2.4%
PINCKNEYVILLE
FRANKLIN
T-43,297
m- 202
%- .4%
WEST CITY
ZEIGLER
JACKSON
T- 62,093
m- 6,988
%- 11%
CARBONDALE
MURPHYSBORO
WILLIAMSON
T- 56,852
m- 1234
%- 2%
MARION
SALINE
T- 28,636
m- 1088
% 3.7%
HARRISBURG
GALLATIN
T-7621
m- 78
%- 1%
SHAWNEETOWN
UNION
T-17,843
m- 234
%- 1.3%
ANNA
DONGOLA
JOHNSON
T- 9711
m- 452
%- 4.6%
VIENNA
POPE
T- 4417
m- 200
%- 4.5%
HARDIN
T-5388
m- 5
%- .09%
ALEXANDER
T- 12,319
m-3889
%- 31%
PULASKI
T- 8864
m- 3003
%- 33%
MASSAC
T- 15,196
m- 991
%- 6.5%
BELGRADE
CAIRO
DISTRICT HEADQUARTERS
MAINTENANCE STORAGE FACILITIES

T- 293,998
m- 18,899
%- 6.4%

ILLINOIS DEPARTMENT OF TRANSPORTATION
HIGHWAY DISTRICTS

CERTIFIED DBE/WBE
by. I.D.O.T.


SCHAUMBURG
1
DIXON
2
OTTAWA
3
PEORIA
4
5
PARIS
SPRINGFIELD
6
EFFINGHAM
7
8
FAIRVIEW HEIGHTS
CARBONDALE
9
JO DAVIESS
STEPHENSON
WINNEBAGO
BOONE
McHENRY
LAKE
CARROLL
OGLE
DEKALB
KANE
COOK
DUPAGE
WHITESIDE
LEE
KENDALL
WILL
HENRY
BUREAU
LASALLE
GRUNDY
ROCK ISLAND
MERCER
PUTNAM
MARSHALL
KANKAKEE
KNOX
STARK
PEORIA
LIVINGSTON
WARREN
HENDERSON
WOODFORD
IROQUOIS
FULTON
McLEAN
HANCOCK
McDONOUGH
FORD
MASON
TAZEWELL
VERMILION
CHAMPAIGN
SCHUYLER
LOGAN
DEWITT
ADAMS
PIATT
BROWN
CASS
MENARD
MACON
MORGAN
SANGAMON
DOUGLAS
EDGAR
PIKE
SCOTT
MOULTRIE
CHRISTIAN
COLES
SHELBY
GREENE
MACOUPIN
CLARK
CALHOUN
CUMBERLAND
MONTGOMERY
JERSEY
FAYETTE
EFFINGHAM
JASPER
CRAWFORD
MADISON
BOND
CLAY
RICHLAND
LAWRENCE
MARION
CLINTON
ST. CLAIR
WAYNE
WABASH
EDWARDS
WASHINGTON
JEFFERSON
MONROE
HAMILTON
WHITE
RANDOLPH
PERRY
FRANKLIN
JACKSON
SALINE
GALLATIN
WILLIAMSON
UNION
JOHNSON
POPE
HARDIN
ALEXANDER
PULASKI
MASSAC

Dist. 1
DBE'S - 173
WBE'S - 53

Dist 2
DBE's - 13
WBE's - 6

Dist 4
DBE's - 14
WBE's - 6

Dist. 3
DBE's - 5
WBE's - 5

Dist 6
DBEs - 15
WBEs - 6

Dist. 5
DBE's - 12
WBE's - 3

Dist 8
DBE'S - 35
WBE'S - 14

Dist. 7
DBE's - 1
WBE's - 3

Dist 9
DBE's - 10
WBE's - 6

STATE WIDE
DBE'S - 314
WBE'S - 115

NON-CONSTRUCTION RELATED
DBE's - 29
WBE's - 19

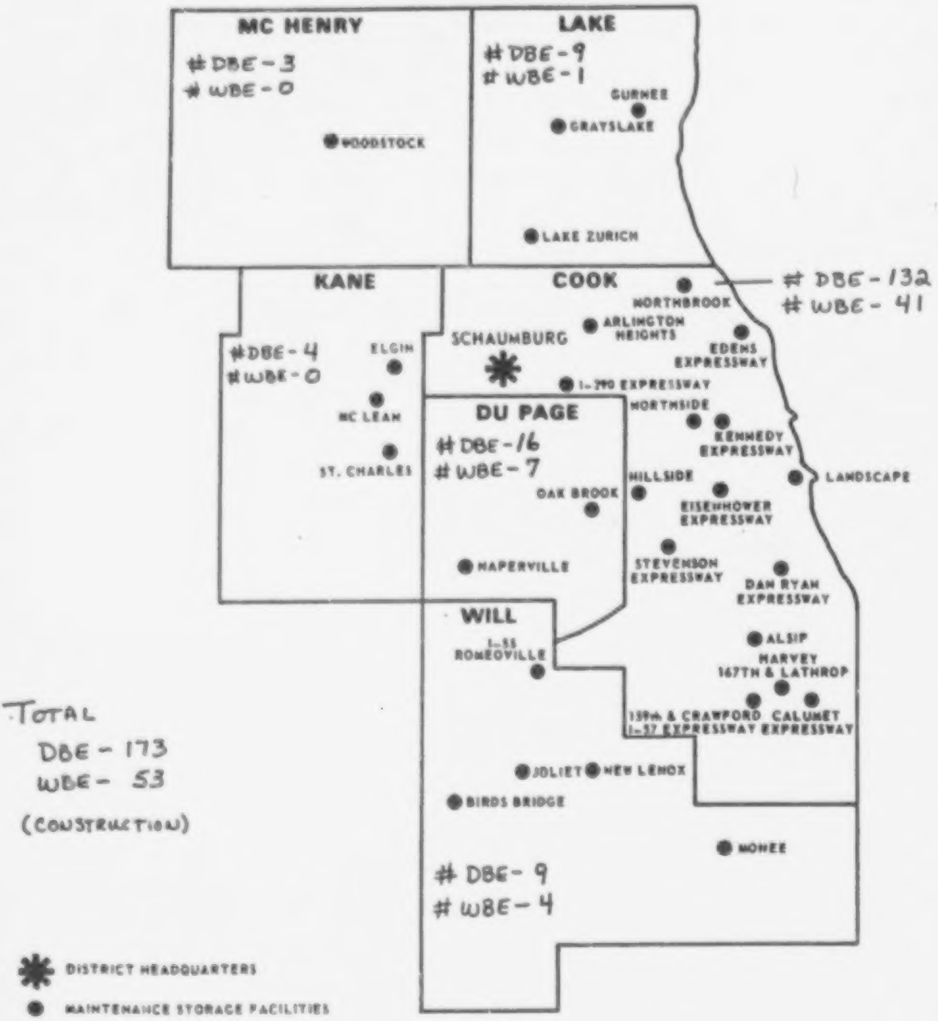
LESS THAN 5 yrs. EXP.
DBE's - 141
WBE'S - 48

OUT OF STATE
DBE'S - 36
WBE'S - 15

10% DBE GOAL - Approx. $90m.
3.5% WBE GOAL - Approx. $3.5m.

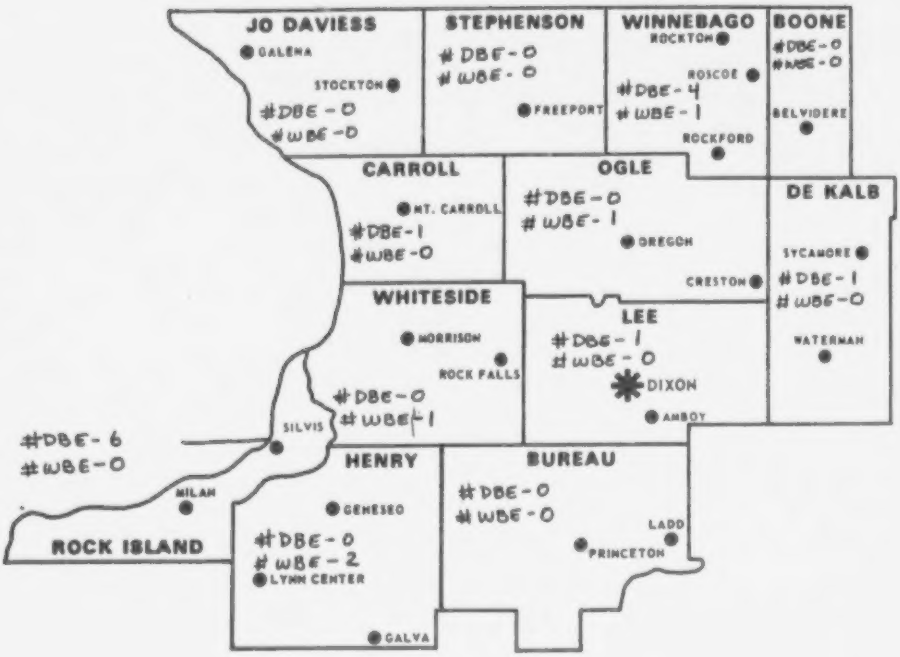
WBE
DBE = CERTIFIED BY IDOT.

DISTRICT 1


MC HENRY
#DBE-3
#WBE-0
WOODSTOCK
LAKE
#DBE-9
#WBE-1
GURNEE
GRAYSLAKE
LAKE ZURICH
KANE
#DBE-4
#WBE-0
ELGIN
MC LEAN
ST. CHARLES
COOK
#DBE-132
#WBE-41
NORTHBROOK
ARLINGTON HEIGHTS
SCHAUMBURG
EDENS EXPRESSWAY
I-290 EXPRESSWAY
NORTHSIDE
KENNEDY EXPRESSWAY
LANDSCAPE
HILLSIDE
EISENHOWER EXPRESSWAY
STEVENSON EXPRESSWAY
DAN RYAN EXPRESSWAY
ALSIP
HARVEY
167TH & LATHROP
159th & CRAWFORD
I-57 EXPRESSWAY
CALUMET EXPRESSWAY
DU PAGE
#DBE-16
#WBE-7
OAK BROOK
NAPERVILLE
WILL
I-55 ROMEOVILLE
JOLIET
NEW LENOX
BIRDS BRIDGE
MONEE
#DBE-9
#WBE-4
DISTRICT HEADQUARTERS
MAINTENANCE STORAGE FACILITIES

TOTAL
DBE - 173
WBE - 53
(CONSTRUCTION)

DISTRICT 2

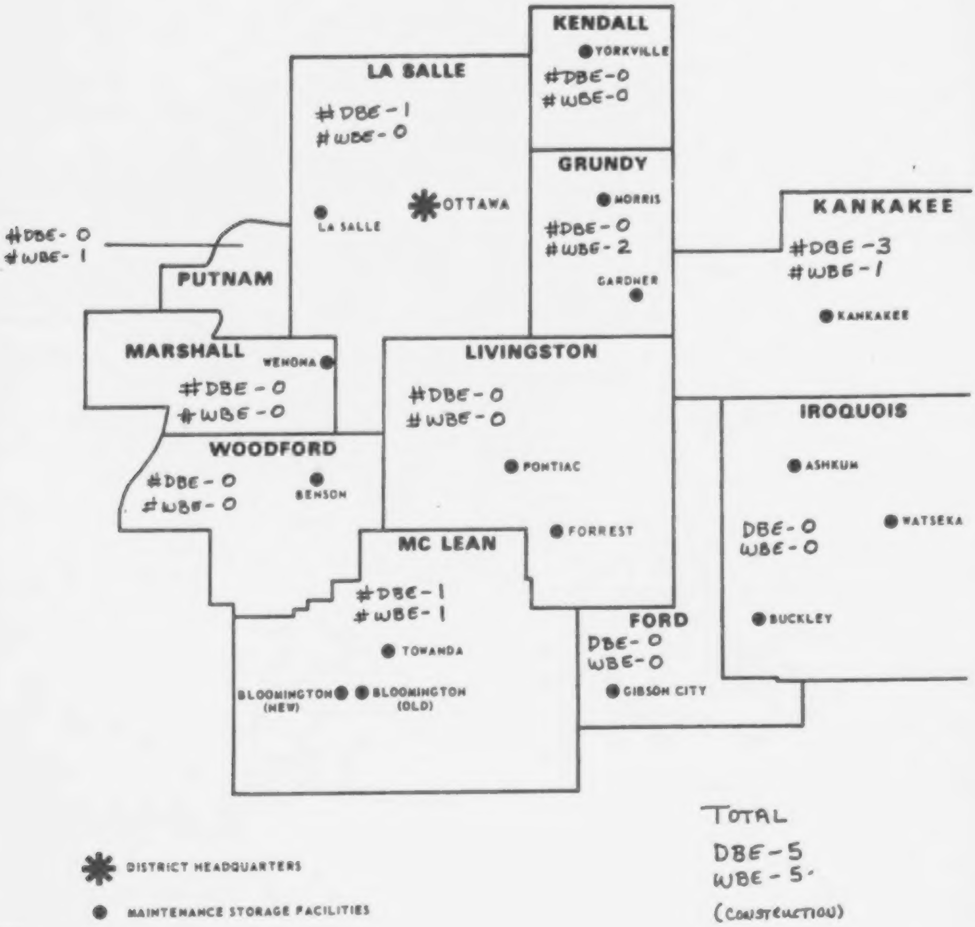

JO DAVIESS
GALENA
STOCKTON
#DBE - 0
#WBE - 0
STEPHENSON
#DBE - 0
#WBE - 0
FREEPORT
WINNEBAGO
ROCKTON
ROSCOE
#DBE - 4
#WBE - 1
ROCKFORD
BOONE
#DBE - 0
#WBE - 0
BELVIDERE
CARROLL
MT. CARROLL
#DBE - 1
#WBE - 0
OGLE
#DBE - 0
#WBE - 1
OREGON
CRESTON
DE KALB
SYCAMORE
#DBE - 1
#WBE - 0
WATERMAN
WHITESIDE
MORRISON
ROCK FALLS
#DBE - 0
#WBE - 1
LEE
#DBE - 1
#WBE - 0
DIXON
AMBOY
#DBE - 6
#WBE - 0
SILVIS
MILAN
ROCK ISLAND
HENRY
GENESEO
#DBE - 0
#WBE - 2
LYNN CENTER
GALVA
BUREAU
#DBE - 0
#WBE - 0
LADD
PRINCETON

✱ DISTRICT HEADQUARTERS

● MAINTENANCE STORAGE FACILITIES

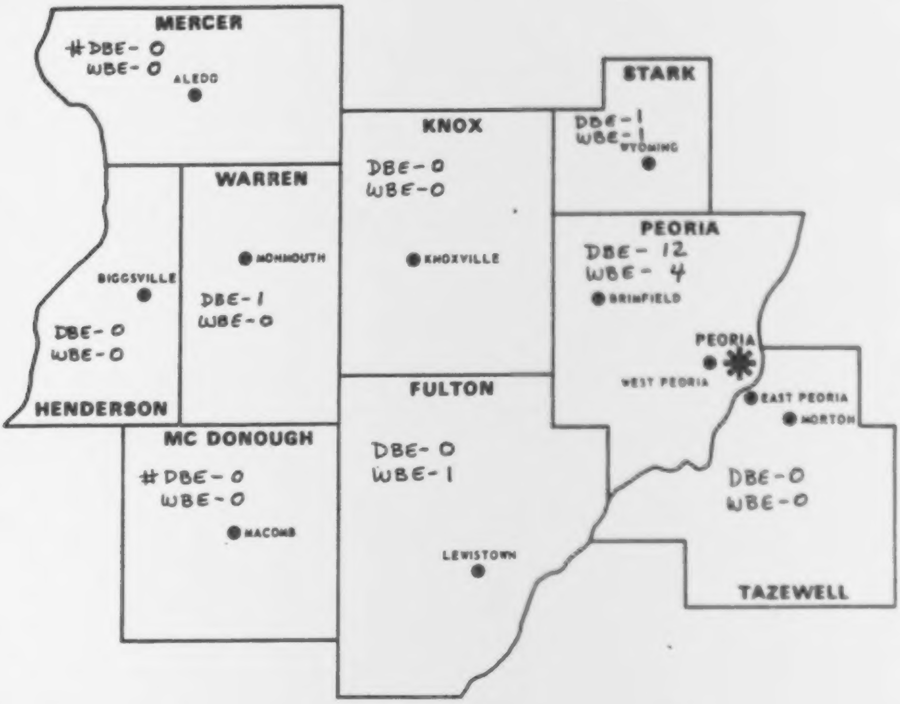
TOTAL
DBE - 13
WBE - 5
(CONSTRUCTION)

DISTRICT 3


KENDALL
YORKVILLE
#DBE-0
#WBE-0
LA SALLE
#DBE-1
#WBE-0
LA SALLE
OTTAWA
GRUNDY
MORRIS
#DBE-0
#WBE-2
GARDNER
KANKAKEE
#DBE-3
#WBE-1
KANKAKEE
#DBE-0
#WBE-1
PUTNAM
MARSHALL
WENONA
#DBE-0
#WBE-0
LIVINGSTON
#DBE-0
#WBE-0
PONTIAC
FORREST
IROQUOIS
ASHKUM
DBE-0
WBE-0
WATSEKA
BUCKLEY
WOODFORD
#DBE-0
#WBE-0
BENSON
MC LEAN
#DBE-1
#WBE-1
TOWANDA
BLOOMINGTON (NEW)
BLOOMINGTON (OLD)
FORD
DBE-0
WBE-0
GIBSON CITY
DISTRICT HEADQUARTERS
MAINTENANCE STORAGE FACILITIES

TOTAL
DBE-5
WBE-5
(CONSTRUCTION)

DISTRICT 4


MERCER
#DBE- 0
WBE- 0
ALEDO
STARK
DBE-1
WBE-1
WYOMING
KNOX
DBE-0
WBE-0
WARREN
MONMOUTH
KNOXVILLE
BIGGSVILLE
DBE-1
WBE-0
DBE-0
WBE-0
HENDERSON
PEORIA
DBE- 12
WBE- 4
BRIMFIELD
PEORIA
WEST PEORIA
EAST PEORIA
MORTON
FULTON
DBE- 0
WBE- 1
MC DONOUGH
#DBE-0
WBE-0
MACOMB
LEWISTOWN
DBE-0
WBE-0
TAZEWELL

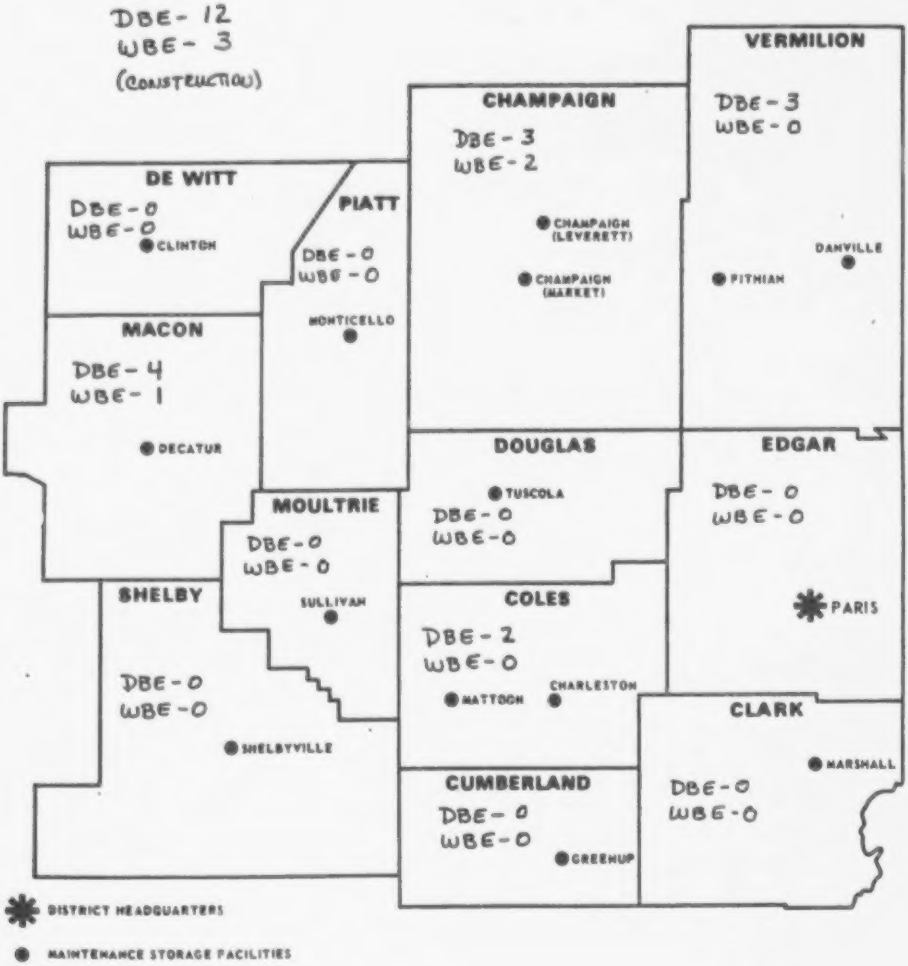
TOTAL
DBE- 14
WBE- 6
(CONSTRUCTION)

✱ DISTRICT HEADQUARTERS

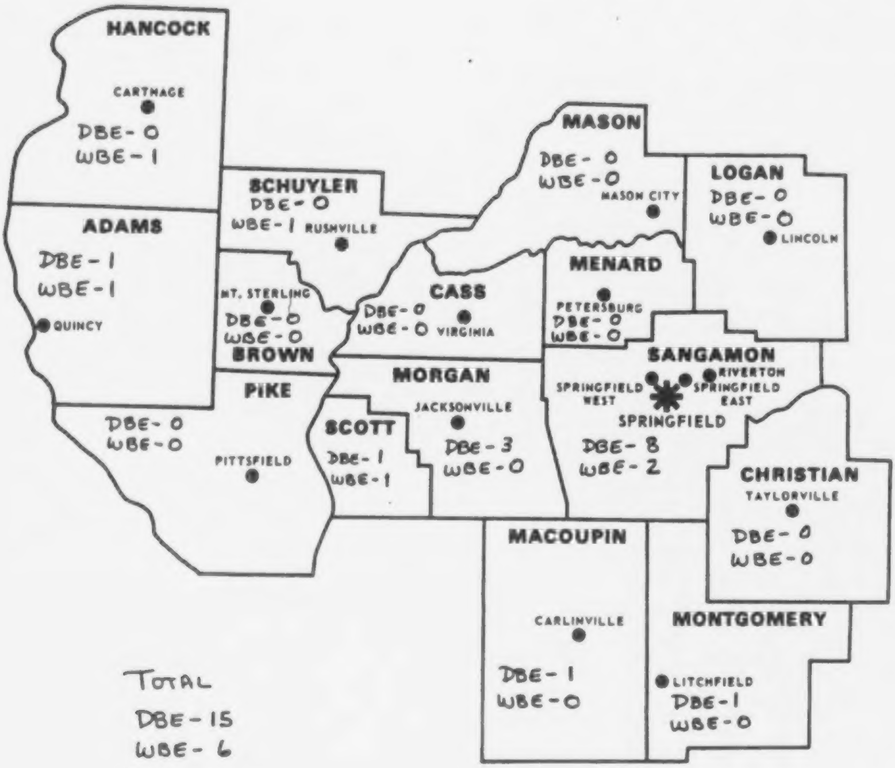
● MAINTENANCE STORAGE FACILITIES

DISTRICT 5

TOTAL
DBE- 12
WBE- 3
(CONSTRUCTION)


VERMILION
DBE-3
WBE-0
DANVILLE
FITHIAN
CHAMPAIGN
DBE-3
WBE-2
CHAMPAIGN (LEVERETT)
CHAMPAIGN (MARKET)
DE WITT
DBE-0
WBE-0
CLINTON
PIATT
DBE-0
WBE-0
MONTICELLO
MACON
DBE-4
WBE-1
DECATUR
DOUGLAS
TUSCOLA
DBE-0
WBE-0
EDGAR
DBE-0
WBE-0
PARIS
MOULTRIE
DBE-0
WBE-0
SULLIVAN
SHELBY
DBE-0
WBE-0
SHELBYVILLE
COLES
DBE-2
WBE-0
MATTOON
CHARLESTON
CLARK
MARSHALL
DBE-0
WBE-0
CUMBERLAND
DBE-0
WBE-0
GREENUP
DISTRICT HEADQUARTERS
MAINTENANCE STORAGE FACILITIES

DISTRICT 6

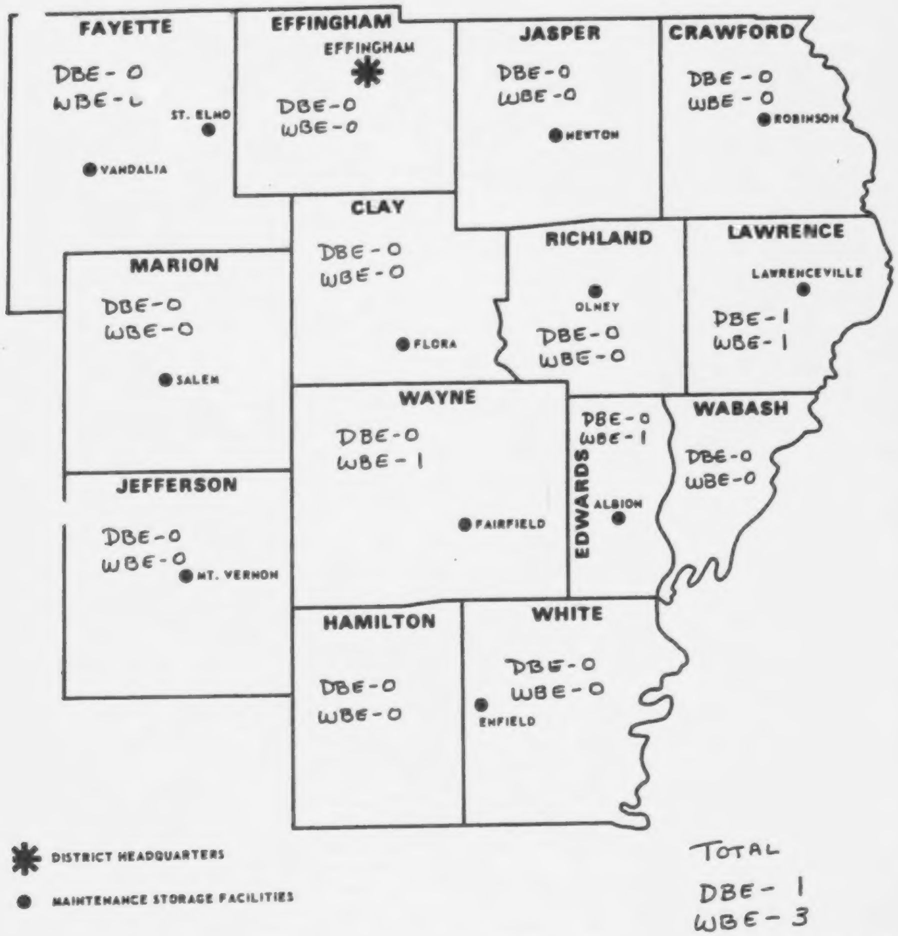

HANCOCK
CARTHAGE
DBE-0
WBE-1
MASON
DBE-0
WBE-0
MASON CITY
LOGAN
DBE-0
WBE-0
LINCOLN
SCHUYLER
DBE-0
WBE-1
RUSHVILLE
ADAMS
DBE-1
WBE-1
QUINCY
MT. STERLING
DBE-0
WBE-0
BROWN
CASS
DBE-0
WBE-0
VIRGINIA
MENARD
PETERSBURG
DBE-0
WBE-0
SANGAMON
SPRINGFIELD WEST
SPRINGFIELD EAST
RIVERTON
SPRINGFIELD
DBE-8
WBE-2
PIKE
DBE-0
WBE-0
PITTSFIELD
MORGAN
JACKSONVILLE
DBE-3
WBE-0
SCOTT
DBE-1
WBE-1
CHRISTIAN
TAYLORVILLE
DBE-0
WBE-0
MACOUPIN
CARLINVILLE
DBE-1
WBE-0
MONTGOMERY
LITCHFIELD
DBE-1
WBE-0

TOTAL
DBE-15
WBE-6
(CONSTRUCTION)

✱ DISTRICT HEADQUARTERS

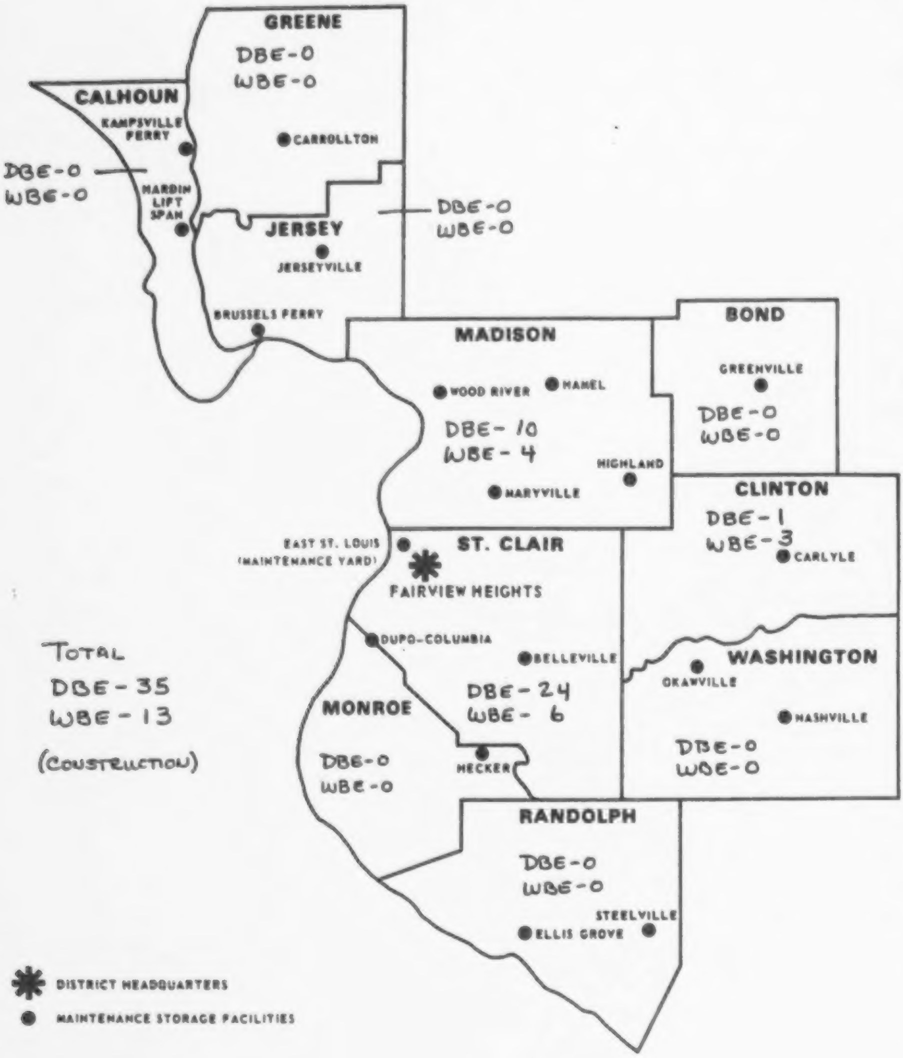
● MAINTENANCE STORAGE FACILITIES

DISTRICT 7

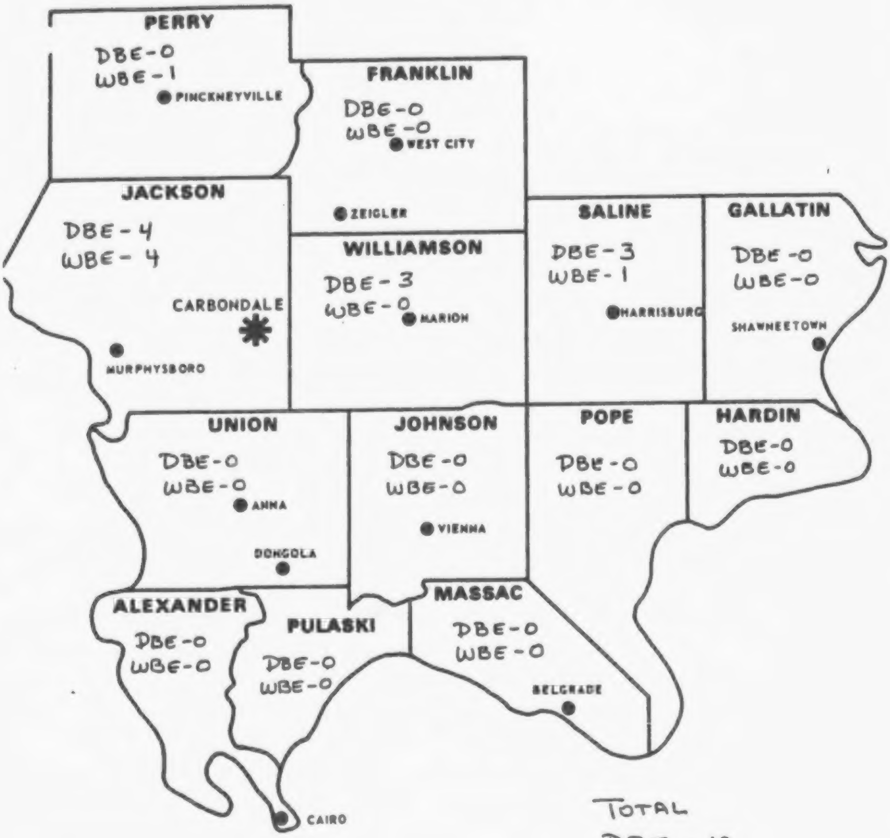

FAYETTE
DBE - 0
WBE - 0
ST. ELMO
VANDALIA
EFFINGHAM
EFFINGHAM
DBE-0
WBE-0
JASPER
DBE-0
WBE-0
NEWTON
CRAWFORD
DBE-0
WBE-0
ROBINSON
CLAY
DBE-0
WBE-0
FLORA
RICHLAND
OLNEY
DBE-0
WBE-0
LAWRENCE
LAWRENCEVILLE
DBE-1
WBE-1
MARION
DBE-0
WBE-0
SALEM
WAYNE
DBE-0
WBE-1
FAIRFIELD
EDWARDS
DBE-0
WBE-1
ALBION
WABASH
DBE-0
WBE-0
JEFFERSON
DBE-0
WBE-0
MT. VERNON
HAMILTON
DBE-0
WBE-0
WHITE
DBE-0
WBE-0
ENFIELD
DISTRICT HEADQUARTERS
MAINTENANCE STORAGE FACILITIES

TOTAL
DBE- 1
WBE- 3
(CONSTRUCTION)

DISTRICT 8


GREENE
DBE-0
WBE-0
CARROLLTON
CALHOUN
KAMPSVILLE FERRY
DBE-0
WBE-0
HARDIN LIFT SPAN
JERSEY
JERSEYVILLE
DBE-0
WBE-0
BRUSSELS FERRY
MADISON
WOOD RIVER
HAMEL
DBE-10
WBE-4
HIGHLAND
MARYVILLE
BOND
GREENVILLE
DBE-0
WBE-0
CLINTON
DBE-1
WBE-3
CARLYLE
EAST ST. LOUIS (MAINTENANCE YARD)
ST. CLAIR
FAIRVIEW HEIGHTS
DUPO-COLUMBIA
BELLEVILLE
DBE-24
WBE-6
WASHINGTON
OKAWVILLE
NASHVILLE
DBE-0
WBE-0
TOTAL
DBE-35
WBE-13
(CONSTRUCTION)
MONROE
DBE-0
WBE-0
HECKER
RANDOLPH
DBE-0
WBE-0
STEELVILLE
ELLIS GROVE
DISTRICT HEADQUARTERS
MAINTENANCE STORAGE FACILITIES

DISTRICT 9


PERRY
DBE-0
WBE-1
PINCKNEYVILLE
FRANKLIN
DBE-0
WBE-0
WEST CITY
ZEIGLER
JACKSON
DBE-4
WBE-4
CARBONDALE
MURPHYSBORO
WILLIAMSON
DBE-3
WBE-0
MARION
SALINE
DBE-3
WBE-1
HARRISBURG
GALLATIN
DBE-0
WBE-0
SHAWNEETOWN
UNION
DBE-0
WBE-0
ANNA
DONGOLA
JOHNSON
DBE-0
WBE-0
VIENNA
POPE
DBE-0
WBE-0
HARDIN
DBE-0
WBE-0
ALEXANDER
DBE-0
WBE-0
PULASKI
DBE-0
WBE-0
MASSAC
DBE-0
WBE-0
BELGRADE
CAIRO

TOTAL
DBE - 10
WBE - 6
(CONSTRUCTION)

DISTRICT HEADQUARTERS

MAINTENANCE STORAGE FACILITIES

ILLINOIS ASSOCIATION OF WOMEN CONTRACTOR'S

Questionnaire: To Be Added To Congressional Testimony

"Barriers To Full Minority Participation In Federally Funded Highway Projects"

1. Which goal system is more beneficial to your company?

   Single goal system (i.e. minority/females 10%)

   Two goal system

2. Which goal system has worked better for your company to date?

3. Which goal system do you feel has a better chance of being retained on a long term basis by the federal highway administration?

4. Which goal system do you consider to be more practical and acceptable to both women and minorities?

5. Has the one goal system initiated in May 1987 increased or decreased the opportunities or revenue for your company?

6. If you could determine the type of goal system to be used by FHWA (IDOT) what would it be?

ECAP SHEET

ILLINOIS ASSOCIATION OF WOMEN CONTRACTOR'S
Questionnaire: To Be Added To Congressional Testimony

"Barriers To Full Minority Participation In
Federally Funded Highway Projects"

QUESTION 1	QUESTION 2	QUESTION 3	QUESTION 4	QUESTION 5	QUESTION 6
1 goal 48	1 goal 42	1 goal 45	1 goal 44	increased 35	1 goal 42
2 goal 24	2 goal 20	2 goal 20	2 goal 25	decreased 12	2 goal 26
no answer 4	no answer 5	no answer 5	no answer 3	no answer 3	no answer 3
nothing helps 1	nothing helps 1	nothing helps 1	nothing helps 1	nothing helps 1	nothing helps 1
no difference 1	no difference 1	no difference 1	no difference 1	no difference 11	no difference 1
		MBE 1	MBE 1		
neither 1	neither 3			neither 1	
		50/50 1	50/50 1	50/50 1	
					no goal system 1
				don't know 1	no idea 1
				increase in the beginning 1	

RECAP SHEET

QUESTION 1	QUESTION 2	QUESTION 3	QUESTION 4	QUESTION 5	QUESTION 6
	5% 1				
			total 1		
				has not decreased 1	
					minority goal 1
				slight increase 1	
				not much difference 1	
			2 goal not fair 1		
			either 1		
				can't compete with cheapies 1	

RECAP SHEET

QUESTION 1	QUESTION 2	QUESTION 3	QUESTION 4	QUESTION 5	QUESTION 6
				no opinion 1	
					WBE - DB 1
	same 1			same 1	

IAWC Illinois Association of Women Contractors

August 12, 1988

The Honorable Ike Skelton
U.S. House of Representatives
Small Business Committee
Washington, D.C. 20515

The Honorable Ike Skelton:

I would like to thank you and all members of the Small Business Sub-Committee involved in the Field Hearing regarding minority participation in national transportation projects.

I would appreciate the Sub-Committee obtaining answers to the following questions we discussed per our conversation after the hearing.

1. How many minority contractors obtained the plans;
2. attended pre-construction conferences;
3. how many minorities submitted bids; and
4. the dollar amount of bid at time of letting on December 22, 1987, excluding W.B.E.'s.

Please forward these results to me from the Sub-Committee.

Also, I would like to correct my answer to a question Congressman Charles Hayes asked me concerning if there were any minority contractors in our Association. I answered no to this question. I should have said yes; our past president and one of the founders of I.A.W.C.&E. was an American Indian. Ms. Jackie Bradley of Directions Metropolitan also was a member, and to date she has not renew her membership. The Association is open to all W.B.E.'s in the state of Illinois.

I am enclosing a typed copy of the verbal statements that I added to my testimony.

Thank you for your assistance in this matter.

Sincerely,

Simone Kapovich

Simone Kapovich
President

TESTIMONY OF PATRICIA A. LOW, PRESIDENT
PAL INDUSTRIES, INC.
TO THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON PROCUREMENT, INNOVATION, AND
MINORITY ENTERPRISE DEVELOPMENT

50

****

MR. CHAIRMAN - MEMBERS OF THE COMMITTEE - THANK YOU VERY MUCH FOR GIVING ME THE OPPORTUNITY TO TESTIFY AT THIS VERY IMPORTANT FIELD HEARING. I AM A SMALL SPECIALTY GENERAL CONTRACTOR WHO IS PRE-QUALIFIED WITH THE ILLINOIS DEPARTMENT OF TRANSPORTATION AND I AM ALSO A SMALL SUB-CONTRACTOR WHO IS CERTIFIED WITHIN THE DBE/WBE PROGRAM OF THE ILLINOIS DEPARTMENT OF TRANSPORTATION. I HAVE BEEN ACTIVE IN THE CONSTRUCTION INDUSTRY FOR OVER 14 YEARS, AND 4 YEARS AGO I STARTED PAL INDUSTRIES, INC. WE SPECIALIZE IN ALL TYPES OF HIGHWAY SIGNING, BRIDGERAIL, BEAM REPAIR AND REPLACEMENT, AND GUARDRAIL. LAST YEAR PAL INDUSTRIES, INC. DID WORK FOR APPROXIMATELY 47 PRIME CONTRACTORS IN THE THE STATE OF ILLINOIS AND 45% OF OUR DOLLAR VOLUME WAS DIRECTLY ATTRIBUTABLE TO BIDDING AS A PRIME CONTRACTOR. OBJECTIVELY, I WOULD LIKE TO STATE THAT I BELIEVE SINCERELY IN THE EFFORTS OF THE UNITED STATES GOVERNMENT TO BRING WOMEN AND MINORITIES INTO THE CONSTRUCTION INDUSTRY. THE DEMOGRAPHICS BROUGHT OUT IN THE DEPARTMENT OF LABOR'S WORKFORCE PROJECT 2000 SHOWS THE REAL NEED TO TRAIN AND EDUCATE MINORITIES AND WOMEN FOR THE FUTURE GOOD OF OUR INDUSTRY, AND FURTHER, MORALLY, I BELIEVE THAT THERE HAS BEEN DISCRIMINATION

AGAINST MINORITIES AND WOMEN IN THIS INDUSTRY AND I BELIEVE THAT IT IS RIGHT AND JUST TO TAKE ACTION THAT STOPS DISCRIMINATION IN ALL FORMS. I FEEL AS A FEMALE CONTRACTOR THERE IS NO QUESTION IN MY MIND THAT I HAVE BEEN DISCRIMINATED AGAINST BOTH COVERTLY AND OVERTLY. YOU HAVE SEEN OR WILL SEE ALL KINDS OF STATISTICS AND INFORMATION FROM OTHER WOMEN IN THIS INDUSTRY AND I CONCUR WHOLEHEARTEDLY WITH THEIR ASSESSMENT OF THE DIFFICULTIES OF BEING A WOMAN CONTRACTOR. THERE IS AN AREA THAT I WOULD LIKE TO ADDRESS, HOWEVER, BECAUSE I BELIEVE THAT IT IS CENTRAL TO THE ISSUE AT HAND. THE PEOPLE IN THE MAINSTREAM OF THE CONSTRUCTION INDUSTRY HAVE LEARNED THAT IN ORDER TO PROGRESS AND DO THE BEST POSSIBLE JOB, THE FREE ENTERPRISE SYSTEM NEEDS THE COMPETITIVE BIDDING SYSTEM. IT IS THIS SYSTEM THAT KEEPS TAXPAYERS COSTS DOWN. IT IS WHAT GENERATES QUALITY PERFORMANCE AND IS WHAT BRINGS ABOUT NEW AND INNOVATIVE IDEAS. I SINCERELY, BELIEVE THAT THE BEST INTERESTS OF THE DBE/WBE BUSINESS AND THE CONSTRUCTION INDUSTRY IN GENERAL WOULD BE BEST SERVED IN THE LONG RANGE BY THE USE OF THE ONE GOAL SYSTEM. I BELIEVE THAT COMPETITION DOES NOT DESTROY POTENTIAL VIABLE DBE AND WBE CONTRACTORS AND THAT COMPETITION IS THE ONE ACTION THAT BRINGS ABOUT THE PERFORMANCE THAT IS NEEDED TO BE COMPETITIVE IN THE CONSTRUCTION ARENA. CONSTRUCTION IS A VERY DIFFICULT BUSINESS. OF ALL TYPES OF BUSINESS IN THE UNITED STATES, ONLY RESTAURANTS HAVE

A HIGHER RATE OF FAILURE. IN FACT THE CURRENT STATISTIC IS THAT 80% OF ALL CONSTRUCTION BUSINESSES STARTED WILL FAIL. THE HIGHWAY CONSTRUCTION INDUSTRY'S PROFITS ARE IN MOST CASES LESS THAN 2%. IT IS EXTREMELY DIFFICULT FOR WHITE AMERICAN MALES TO SURVIVE IN THIS BUSINESS. HOW MUCH MORE DIFFICULT IS IT FOR DBE AND WBE COMPANIES? AS I READ THE PROGRAM FROM THE FEDERAL LEVEL IT WAS SET UP AS A GOAL ORIENTED PROGRAM TO HELP MINORITY FIRMS ENTER INTO THE MAINSTREAM OF THE AMERICAN CONSTRUCTION INDUSTRY. THE GOAL PROGRAM WAS DESIGNED AS A HELP PROGRAM FOR THOSE WHO WISH TO HELP THEMSELVES. AN EXAMPLE OF THIS IS ITEM #14 IN THE INTRODUCTORY QUESTION AND ANSWER SECTION OF THE BLUE BOOK OF THE ILLINOIS DEPARTMENT OF TRANSPORTATION CERTIFICATION PROCESS. THE QUESTION IS AS FOLLOWS; "DOES A FIRM'S DBE CERTIFICATION GUARANTEE THAT IT WILL BE AWARDED CONTRACTS?" THE ANSWER IS, "NO, THE DBE PROGRAM IS DESIGNED TO ASSIST THE DEVELOPMENT OF DISADVANTAGED SMALL BUSINESSES AND TO GUARANTEE THEM FAIR OPPORTUNITIES TO COMPETE FOR A RECIPIENT'S BUSINESS. IT DOES NOT GUARANTEE WORK TO A FIRM. TO BE SUCCESSFUL A DBE MUST FIRST BECOME CERTIFIED BY THE RECIPIENT IT INTENDS TO SERVE AND THEN SELL ITSELF, ITS PERSONNEL AND ITS SERVICES AS ANY GOOD BUSINESS SHOULD. EACH RECIPIENT HAS A STRONG COMMITMENT TO MEET ITS DBE GOALS BUT THE COMPETITION IN THE MARKETPLACE REMAINS FUNDAMENTAL. NO RECIPIENT IS EXPECTED TO IGNORE THE

PRINCIPLE OF AWARDING CONTRACTS ON THE BASIS OF THE LOWEST COMPETITIVE AND RESPONSIVE BID." TO ME, A LARGE PART OF THE CONFUSION SURROUNDING THE PROGRAM IS BROUGHT ABOUT BY THE CONFLICT OF BEING DISADVANTAGED ON THE ONE SIDE AND THE EXPECTATION ON THE OTHER SIDE THAT EACH AND EVERY DBE AND WBE BE INDEPENDENT, SELF-SUPPORTING, KNOWLEDGEABLE AND ADEQUATELY FUNDED. THE TWO IDEAS SIMPLY ARE NOT COMPATABLE. HOW CAN THE DISADVANTAGED AND WOMEN-OWNED BUSINESSES BE EXPECTED TO KNOW AND BE ALL OF THOSE THINGS OVER SUCH A SHORT PERIOD OF TIME? ONE HAS TO GROW INTO THE LEADERSHIP AND RESPONSIBILITIES OF OWNING A BUSINESS. IN CONCLUSION, WHEN DISCUSSING HIGHWAY NEEDS, MILLIONS AND BILLIONS OF DOLLARS ARE BANTERED AROUND. IT SHOULD BE NOTED THAT HIGHWAY CONTRACTORS ARE NOT LARGE BUSINESSES. FIGURES FROM A LOCAL TRADE ORGANIZATION SUGGEST THAT THE AVERAGE ANNUAL DOLLAR VOLUME OF A PRIME CONTRACTOR IN ILLINOIS IS LESS THAN $4 MILLION. THEY ARE HISTORICALLY SMALL FAMILY OWNED BUSINESSES. MOST OF THESE CONTRACTORS NEVER WILL ATTAIN THE $14 MILLION A YEAR IN CONSTRUCTION SALES. MANY OF THESE FIRMS, IN FACT, PREFER TO STAY SMALL WHERE THEY CAN KEEP CLOSE CONTROL ON ALL THEIR COSTS AND THEREFORE MAINTAIN A HIGHER PERCENTAGE OF PROFIT. ANOTHER POINT IS THAT ON THE AVERAGE ONLY ABOUT 10% OF A CONTRACTORS WORK IS AVAILABLE TO BE SUBLET. THE REST OF THE WORK WILL BE DONE BY THE PRIME

CONTRACTOR HIMSELF. THERE SIMPLY IS NOT THE CORNUCOPIA THAT PEOPLE BELIEVE THERE IS IN THE CONSTRUCTION BUSINESS, AND THE ONLY CHANCE FOR THE LONG TERM SURVIVAL FOR THE DBE AND WBE CONTRACTORS IS TO BE EXPOSED AND TESTED IN THIS VERY COMPETITIVE MARKET. THEREFORE, IT IS ESSENTIAL FOR THE ONE GOAL SYSTEM TO REMAIN IN EFFECT. THANK YOU FOR THE OPPORTUNITY TO TESTIFY.

CHICAGO
URBAN LEAGUE
4510 S. MICHIGAN AVE. CHICAGO, ILLINOIS 60653 312/285-5800

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TESTIMONY PRESENTED BY
SHARRON MATTHEWS
DIRECTOR
ADVOCACY DEPARTMENT
BEFORE THE SMALL BUSINESS
SUBCOMMITTEE ON PROCUREMENT, INNOVATION
AND MINORITY ENTERPRISE DEVELOPMENT,
UNITED STATES HOUSE OF REPRESENTATIVES
AUGUST 8, 1988

DISTINGUISHED MEMBERS OF THE SMALL BUSINESS SUBCOMMITTEE ON PROCUREMENT, INNOVATION, AND MINORITY ENTERPRISE DEVELOPMENT, I AM SHARRON MATTHEWS, DIRECTOR OF THE CHICAGO URBAN LEAGUE'S ADVOCACY DEPARTMENT. ON BEHALF OF PRESIDENT JAMES W. COMPTON AND THE CHICAGO URBAN LEAGUE BOARD OF DIRECTORS, I EXPRESS DEEP APPRECIATION AND SUPPORT FOR THE SERIOUS ATTENTION DIRECTED BY THIS HEARING TOWARD EQUITABLE PARTICIPATION BY BLACK AND OTHER MINORITY BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION (DOT) PROGRAMS.

THE CHICAGO URBAN LEAGUE, FOUNDED IN 1916, IS THE OLDEST AND LARGEST FULL TIME RACE RELATIONS AGENCY. THE LEAGUE'S MISSION IS TO ELIMINATE RACIAL DISCRIMINATION AND TO WORK FOR THE ACHIEVEMENT OF EQUAL OPPORTUNITY AND PARTIY FOR BLACKS AND OTHER MINORITIES IN EVERY PHASE OF AMERICAN LIFE.

AS THE CITY OF CHICAGO'S PREMIER RACE RELATIONS ORGANIZATION, ALL OF OUR WORK HAS BEEN DIRECTED TOWARD ACHIEVING EQUAL OPPORTUNITIES AND IMPROVING THE EQUALITY OF LIFE FOR ALL CHICAGOANS. OUR STRATEGIES HAVE VARIED WITH THE DEMANDS OF THE TIME, BUT INCLUDE RESEARCH, ADVOCACY AND DIRECT SERVICES IN THE AREAS OF EDUCATION, EMPLOYMENT AND ECONOMIC DEVELOPMENT, SOCIAL SERVICES HOUSING, AND GOVERNMENT RELATIONS.

OUR TASK HAS NEVER BEEN EASY, AND AT TIMES, IT APPEARS TO US THAT OUR GOAL OF EQUALITY OF OPPORTUNITY HAS BECOME MORE DISTANT, THAT OUR ADVANCES OF THE PAST HAVE BEEN REVERSED, THAT NATIONAL COMMITMENTS AND RESOURCES OF COMPASSION, GOODWILL AND FAIRNESS ARE EVAPORATING.

AS YOU ARE PROBABLY AWARE, THE CHICAGO URBAN LEAGUE HAS BEEN ACTIVELY INVOLVED IN THE DEVELOPMENT OF AFFIRMATIVE ACTION PROGRAMS AND MINORITY BUSINESSES. THE LEAGUE HAS LONG UNDERSTOOD THAT THE DEVELOPMENT OF MINORITY BUSINESSES IS A VITAL PART OF ANY STRATEGY TO FOSTER ECONOMIC DEVELOPMENT AND AUGMENT EMPLOYMENT OPPORTUNITIES. TO THIS END, OUR AFFIRMATIVE ACTION DIVISION HAS WORKED TO PROMOTE MINORITY BUSINESS PARTICIPATION IN A NUMBER OF MAJOR CONSTRUCTION PROJECTS, WHILE ALSO PROMOTING THE HIRING OF MINORITY WORKERS BY ALL CONTRACTORS INVOLVED. THIS EFFORT HAS ENTAILED DESIGN OF AGGRESSIVE AFFIRMATIVE ACTION PLANS, MONITORING IMPLEMENTATION OF THE PLANS, AND PROVIDING TECHNICAL ASSISTANCE TO BOTH CONTRACTORS AND MINORITY VENDORS. MAJOR CONTRACTS HAVE INCLUDED THE $350 MILLION UNITED AIRLINES "TERMINAL FOR TOMORROW', THE $600 MILLION AT&T CORPORATE CENTER, AND OTHER MAJOR CONSTRUCTION PROJECTS. THE LEAGUE'S INVOLVEMENT WITH AFFIRMATIVE ACTION IN RELATION TO THE ILLINOIS

DEPARTMENT OF TRANSPORTATION AND FEDERAL HIGHWAY PROGRAMS BEGAN IN 1982 SHORTLY AFTER THE PASSAGE OF THE SURFACE TRANSPORTATION ASSISTANCE ACT SPECIFICALLY AS IT RELATED TO SECTION 105(F). WE FOUND THAT IDOT WAS NOT MEETING THE FEDERAL REQUIREMENT THAT A MINIMUM OF 10% OF FUNDS FOR HIGHWAY CONSTRUCTION PROJECTS SHOULD BE SPENT WITH MINORITY CONTRACTORS AND SMALL BUSINESSES.

AT THAT TIME, A CIVIL SUIT (BLACK CONTRACTORS UNITED VS. ILLINOIS DEPARTMENT OF TRANSPORTATION) WAS FILED IN U.S. DISTRICT COURT AGAINST IDOT AND A SUBSEQUENT FORMAL COMPLAINT WAS FILED WITH SECRETARY ELIZABETH DOLE OF THE U.S. DEPARTMENT OF TRANSPORTATION. THE ESSENCE OF CHARGES AGAINST IDOT WERE AS FOLLOWS:

1) IDOT HAD FAILED TO ENSURE THAT 10% OF FUNDS APPROPRIATED UNDER THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982 AND AWARDED BY IDOT HAD BEEN EXPENDED WITH DISADVANTAGED BUSINESS ENTERPRISES (DBEs). ONLY 6.1% OF TOTAL IDOT AWARDS WERE MADE TO DBEs.

2) IDOT HAD FAILED TO PROVIDE AN EFFECTIVE MONITORING SYSTEM OF CONTRACT AWARDS TO ENSURE ACCURATE INFORMATION ON DBE PARTICIPATION.

3) IDOT FAILED TO PROVIDE AN EFFECTIVE SYSTEM FOR ENSURING FULL AND EQUAL PARTICIPATION BY LEGITMATE, CAPABLE DBEs. (CONTRACTS WERE BEING AWARDED TO "FRONTS" OR DBEs THAT WERE INCAPABLE OF PERFORMING THE WORK. CERTIFICATION AND PREQUALIFICATION PROCEDURES WERE SEEN AS A HINDRANCE TO MINORITY PARTICIPATION.

4) DEFICIENCIES IN IDOT'S DBE PROGRAM STEMMED DIRECTLY FROM A SYSTEMATIC EXCLUSION OF REPRESENTATIVES OF THE MINORITY BUSINESS COMMUNITY IN THE PLANNING, IMPLEMENTATION, AND MONITORING OF THIS PROGRAM.

THESE COMPLAINTS WERE LODGED IN 1984. THE LAWSUIT RESULTED IN A TEMPORARY RESTRAINING ORDER DELAYING THE BID PROCESS FOR THE EISENHOWER EXPRESSWAY RECONSTRUCTION. THE SUIT WAS LATER DISMISSED DUE TO THE FAILURE TO INCLUDE THE U.S. DEPARTMENT OF TRANSPORTAITON AS A DEFENDANT IN THE CASE. SOME OF THE ISSUES IN THE SUIT WERE SUBSEQUENTLY ADDRESED BY IDOT AND THE ILLINOIS GENERAL ASSEMBLY, BUT THERE CONTINUES TO BE MAJOR PROBLEMS LOCALLY AND NATIONALLY REGARDING ACCESS AND FULL PARTICIPATION BY MINORITIES IN DOT PROGRAMS.

IRONICALLY, ON THE NATIONAL LEVEL, THE CURRENT MAJOR BARRIER IS AN AMENDMENT TO A LAW WHICH WAS ORIGINALLY DRAFTED TO HELP REMOVE SUCH BARRIERS. THE EFFECT OF THE SURFACE TRANSPORTATION UNIFORM RELOCATION ASSISTANCE ACT (STURAA) OF 1987, SECTION 106 (c) HAS BEEN TO SUBSTANTIALLY REDUCE MINORITY BUSINESS ENTERPRISE (MBE) PARTICIPATION IN PUBLIC WORKS PROJECTS.

THE CHANGES MADE BY CONGRESS IN DOT'S DISADVANTAGED BUSINESS ENTERPISES (DBEs) PROGRAM HAVE RESULTED IN A REDUCED LEVEL OF CONTRACTS AWARDED TO MBEs AND A DISPROPORTIONATE NUMBER OF CONTRACTS AWARDED TO RECENTLY CONVERTED WHITE WOMEN BUSINESS ENTERPRISES. NOWHERE IS THIS CRISIS MORE EVIDENT THAN THE

DAN RYAN EXPRESSWAY REHABILITATION PROJECT (ONE OF THE LARGEST PUBLIC WORKS PROJECTS IN THE CITY OF CHICAGO).

THE LAST SIXTEEN MONTHS HAVE BEEN PARTICULARLY DIFFICULT FOR US, AS WE, IN COLLABORATION AND COORDINATION WITH THE FOLLOWING ORGANIZATIONS HAVE BEEN CONFRONTING THE DAMAGE DONE ON THE DAN RYAN EXPRESSWAY BY STURAA: OPERATION PUSH; THE WOODLAWN ORGANIZATION; LAWNDALE PEOPLES PLANNING & ACTION CONFERENCE; MIDWEST COMMUNITY COUNCIL; BLACK CONTRACTORS UNITED; HISPANIC-AMERICAN CONSTRUCTION INDUSTRY ASSOCIATION; MIDWEST CONTRACTORS FOR PROGRESS; CHICAGO WOMEN IN TRADES; COALITION FOR UNITED COMMUNITY ACTION; LATIN AMERICAN TASK FORCE; WESTSIDE SMALL BUSINESS DEVELOPMENT CORPORATION; SPANISH COALITION FOR JOBS; COALITION FOR UNITED COMMUNITY LABOR FORCE; AND THE CHICAGO PROFESSIONAL DEVELOPMENT CORPORATION. (ALL OF THESE ORGANIZATIONS ARE MEMBERS OF THE DAN RYAN IS VITAL TO EVERYONE IN CHICAGO COALITION (DRIVE) WHICH WAS ORGANIZED TO CORRECT THE INJUSTICES FOUND ON THE DAN RYAN RECONSTRUCTION PROJECT.

ON FEBRUARY 26, 1988, THE DRIVE COALITION ENTERED INTO AN AGREEMENT WITH GOVERNOR JAMES R. THOMPSON TO CORRECT THE PROBLEMS ON THE $210 MILLION DAN RYAN REHABILITATION PROJECT. IDOT'S FIRST MAJOR LETTING (DAN RYAN) UNDER STURAA, RESULTED IN 78% OR $16.8 MILLION IN CONTRACTS AWARDED TO WBEs; 16.9% OR $3.65 MILLION AWARDED TO HISPANIC MBEs AND 5.2% OR $1.12 MILLION AWARDED TO BLACK MBEs. IDOT'S MINORITY AND FEMALE WORK FORCE GOALS FOR THE "PROJECT" WERE 19.6% AND 6.9% RESPECTIVELY WHICH REPRESENTED THE BARE MINIMUM REQUIRED BY FEDERAL GUIDELINES.

TEN OF IDOT'S FOURTEEN (14) MEMBER DBE ADVISORY COUNCIL WERE NON-DBE REPRESENTATIVES. IN ADDITION, THE BLACK MEMBERS OF THE "COUNCIL' CHARGED THAT IDOT WAS INSENSITIVE AND NON-REPONSIVE TO THEIR CONCERNS AND PROBLEMS; MOST OF WHICH DEALT WITH IDOT'S RACIALLY-EXCLUSIVE PREQUALIFICATION REQUIREMENTS.

THE DRIVE COALITION REQUESTED AND RECEIVED A COMMITMENT FROM IDOT TO SET-ASIDE AN ADDITIONAL $15.7 MILLION IN DAN RYAN AND ANCILLARY CONTRACTS, STATE-MAINTAINED STREETS IN THE CITY OF CHICAGO, EISENHOWER (I-290) AND ALTERNATE ROUTES. AS A RESULT, THE WALSH AND MADDEN JOINT VENTURES HAVE EACH AWARDED AN ADDITIONAL ONE MILLION DOLLARS IN DAN RYAN CONTRACTS TO MBEs. IN ADDITION, IDOT'S MARCH, MAY, AND JUNE 1988 LETTINGS HAVE CONTAINED 18 QUALITY SHELTERED MARKET PROJECTS FOR DBEs. FOURTEEN OF THOSE SHELTERED MARKET PROJECTS WERE AWARDED TO MBEs. NO BIDS WERE RECEIVED ON THREE, AND ONE WAS WITHDRAWN BY IDOT FOR TECHNICAL REASONS.

THE DRIVE COALITION RECOMMENDED THAT IDOT ADOPT THE FOLLOWING MINORITY AND FEMALE WORK FORCE GOALS FOR THE ENTIRE DAN RYAN PROJECT (PHASE II):

MINORITY/FEMALE EMPLOYMENT GOALS

1) SKILLED TRADES

MINORITY/FEMALE PARTICIPATION GOALS:

-MINORITY	35%
-WOMEN	10%
TOTAL	45%

2) GENERAL LABOR

MINORITY/FEMALE PARTICIPATION GOALS:

-MINORITY	56%
-WOMEN	10%
TOTAL	66%

IN ORDER TO ASSURE ATTAINMENT OF THESE GOALS, IDOT OBTAINED JOB PLEDGES/COMMITMENTS FROM THE PRIME CONTRACTORS/SUBCONTRACTORS AND THEIR RESPECTIVE LABOR ORGANIZATIONS TO SET-ASIDE AND HELP FACILITATE MEANINGFUL PLACEMENT OF 190 DRIVE APPLICANTS IN SKILLED TRADES AND SKILLED/UNSKILLED LABOR JOBS.

EFFECTIVE MARCH 16, 1988, THE CHICAGO URBAN LEAGUE ENTERED INTO A SEVEN AND A HALF MONTH (3/16/88 - 10/31/88) CONTRACT ($125,000) WITH IDOT, TO FACILITATE THE 190 PLACEMENTS AND TO PROVIDE RELATED SUPPORTIVE SERVICES TO THE NEW HIRES FOR PHASE II OF THE DAN RYAN PROJECT.

THE CHICAGO URBAN LEAGUE AGREED TO SUBCONTRACT WITH TEN OTHER DRIVE ORGANIZATIONS TO ASSIST IT IN FILLING AND MAINTAINING THE 190 JOBS. TO DATE, EIGHT OF THE TEN GROUPS HAVE ENTERED INTO SUBCONTRACT AGREEMENTS WITH THE CHICAGO URBAN LEAGUE. TWO ORGANIZATIONS (MIDWEST COMMUNITY COUNCIL AND CHICAGO PROFESSIONAL DEVELOPMENT CORPORATION) HAVE NOT YET SIGNED THEIR SUBCONTRACT AGREEMENTS. HOWEVER, THEY ARE PARTICIPATING IN THE PROGRAM BY RECRUITING AND REFERRING APPLICANTS TO THE CHICAGO URBAN LEAGUE FOR PLACEMENT.

AS OF AUGUST 4, 1988, 119 (62.63%) OF THE 190 MINORITY/FEMALE SLOTS HAVE BEEN FILLED WITH THE WALSH/TRAYLOR/McHUGH JOINT VENTURE AND MADDEN/ILLINOIS CONSTRUCTION JOINT VENTURE, OF THE 119 WORKERS PLACED, 21 ARE BLACK FEMALES (18%), TWO ARE WHITE FEMALES (2%), 14 ARE HISPANIC MALES (12%), AND 82 ARE BLACK MALES (68%). FIFTY-ONE OF THE 119 EMPLOYEES WERE LAID OFF/TERMINATED; OF WHICH NINE WERE RECALLED. AN ANALYSIS OF THE LAID-OFF EMPLOYEES' LENGTH OF EMPLOYMENT IS AS FOLLOWS:

-Less Than One Week	12
One Week	6
Two Weeks	9
Three Weeks	6
Four Weeks	7
Five Weeks	4
Six Weeks	2
Seven Weeks	5
TOTAL	51

IDOT'S REPORT OF AUGUST 4, 1988, SHOWS THAT MINORITY/FEMALE PERCENTAGES OF THE TOTAL WORK FORCE ARE AS FOLLOWS:

SKILLED

o MINORITY MALE	30.41%	o FEMALE	4.13%	TOTAL:	34.54%
-BLACK MALE	17.76%	-FEMALE	3.64%	TOTAL:	21.41%
-ASIAN MALE	.24%			TOTAL:	.24%
-NATIVE AMER.	1.70%			TOTAL:	1.70%
-HISPANIC	9.73%	-FEMALE	.72%	TOTAL:	10.46%

UNSKILLED

o MINORITY MALE	58.33%	o FEMALE	7.24%	TOTAL:	65.57%
-BLACK MALE	29.71%	-FEMALE	3.98%	TOTAL:	33.69%
-HISPANIC	26.81%	-FEMALE	.72%	TOTAL:	27.53%

THE CHICAGO URBAN LEAGUE REQUESTED AND RECEIVED THE TWO JOINT VENTURES' CERTIFIED PAYROLLS FOR THE PROJECT FROM IDOT. WE ARE CURRENTLY VERIFYING THE ABOVE MINORITY/FEMALE PARTICIPATION DATA. THE CHICAGO URBAN LEAGUE AND ILLINOIS DEPARTMENT OF TRANSPORTATION, IN CONJUNCTION WITH THE ILLINOIS DEPARTMENT OF HUMAN RIGHTS, ARE REVIEWING/DEVELOPING RETENTION STANDARDS FOR CONSTRUCTION EMPLOYEES.

BASED UPON IDOT'S CURRENT PERFORMANCE TO DATE, WE HAVE NO EVIDENCE THAT IT WILL NOT LIVE UP TO THE LETTER AND SPIRIT OF THE AGREEMENT SIGNED BY GOVERNOR THOMPSON AND DRIVE ON FEBRUARY 26, 1988. HOWEVER, WE HAVE NOT MONITORED IDOT'S CONTRACTING AND PURCHASING ACTIVITIES THROUGHOUT THE REST OF THE STATE. BASED ON INFORMATION RECEIVED SEVERAL MONTHS AGO, AN OVERWHELMING NUMBER OF HIGHWAY AND PRIME SUBCONTRACTORS WERE AWARDED TO WBEs. THEREFORE, WE CHALLENGE THIS SUBCOMMITEE OF THE UNITED STATES CONGRESS TO REINSTITUTE THE TWO GOAL SYSTEM, WHICH CALLED FOR SEPARATE SET-ASIDE GOALS FOR MINORITY BUSINESS ENTERPRISE FIRMS AND WOMEN BUSINESS ENTERPRISE FIRMS IN DOT HIGHWAY AND URBAN MASS TRANSPORTATION PROCUREMENT. DOT'S FINAL RULE FAILED TO ADDRESS THE CONFEREES' DESIRE THAT PARTICIPATION OF MINORITIES AND WOMEN SHOULD BE EQUITABLY DISTRIBUTED THROUGHOUT THE CONSTRUCTION INDUSTRY, AND THAT THE IMPLEMENTATION OF THE DBE PROGRAM SHOULD NOT FALL DISPROPORTIONATELY ON ANY ONE SEGMENT OF THE INDUSTRY.

IT IS WELL DOCUMENTED THAT DURING THE FIRST SIXTEEN (16) MONTHS OF STURRA - (106) (c), A DISPROPORTIONATE NUMBER OF DOT SET-ASIDE CONTRACTS HAVE GONE TO WBE FIRMS. WE ALSO KNOW THAT WHEN STATES WERE ALLOWED TO USE THE TWO GOAL SYSTEM, DBE SET-ASIDE CONTRACTS WERE DISTRIBUTED MORE EQUITABLY.

SO CONSEQUENTLY, IF YOU FAIL TO ACT IN A TIMELY FASHION OR FAIL TO ELIMINATE WHAT EVEN SOME STATE OFFICIALS HAVE CALLED A "BAD LAW", MINORITY HIGHWAY AND URBAN MASS TRANSPORTATION FIRMS WILL LOSE BOTH MONEY AND EXPERIENCE THAT ARE UNRECOVERABLE AND INESTIMABLE. WE HAVE KNOWN WHAT IS LIKELY TO PRODUCE A POSITIVE CHANGE IN THIS SITUATION FOR QUITE SOME TIME. CAN WE RELY ON OUR GOVERNMENT TO DO IT? THE ANSWER TO THAT QUESTION TESTS OUR COMPASSION, OUR WISDOM, OUR COMMITMENT TO OUR MOST BASIC VALUES AS A PEOPLE. THE ANSWER IS THE FUTURE OF MINORITY HIGHWAY CONTRACTORS AND WORKERS.

[illegible] of the Dan Ryan is vital to Everyone Coalitions
discussion with Governor Thompson on February 26, 1988

Today we met with Governor Thompson to discuss the newly implemented one goal set aside program. In order to correct the problem created by IDOT's award of more than 60% of the contracts to women owned businesses.

1) 15.7 million will be sheltered for D.B.E/M.B.E contractors. In order to insure that an equitable portion of these contracts go to M.B.E.'s, the DRIVE Coalition has been authorized to assist the State of Illinois (Governor James Thompson) to:

    a) Recruit
    b) Screen
    c) Monitor
    d) Assess and oversee the contract award process.

2) The State of Illinois (Governor James Thompson) recognizes that the one goal system is flawed and subject to abuse, therefore the Governor has agreed to the following:

    a) Meet with the Secretary of D.O.T. (Burnley) to seek to have the Federal Highway Administrators interpretation of the implementation of the one goal rule overturned.

    b) Seek a wavier from Federal Department of Transportation for the $12.7 million in projects indicated on the following page.

    c) Work with DRIVE and other interested parties to seek to have the one goal law covering minority set asides changed back to the two goal system for minorities and women.

    d) The Governor has requested that DRIVE and other interested parties appoint representatives to serve as an ongoing monitoring and assessment vehicle to oversee all present and future state transportation projects to insure that equity is achieved in the awards of contracts.

    e) On the question of jobs, the Governor and DRIVE have agreed to the following new goals for the workforce on the Dan Ryan Project

	BLACK	HISPANIC	FEMALE	MINORITY/FEMALE TOTALS
Skilled	25%	10%	10%	45%
Unskilled	46%	10%	10%	66%

In addition, contracts for the following highway projects will include the following goals for D.B.E./M.B.E.'s beginning in March of 1988 and continuing over a two year period.

DAN RYAN	$ 3.2 Million	
CITY OF CHICAGO	2.5 Million	(Dan Ryan vicinity)
EISENHOWER/I 290	1.0 Million	
Other State Contracts	9.0 Million	

This represents a total of 15.7 Million in new and additional dollars offered in regards to the Dan Ryan project.

f) DRIVE will establish a working task force to meet with the State Department of Transportation for the purpose of reassesing to increase the minimum standards regarding D.B.E/M.B.E. goals which is currently at 10%

Willie Barrow

STATEMENT OF CLEVE CHAPMAN, PRESIDENT, MIDWEST CONTRACTORS FOR PROGRESS

I WOULD LIKE TO THANK CONGRESSMEN CHARLES HAYES FOR HAVING THIS HEARING TO INVESTIGATE THE PROBLEMS WITH SMALL BLACK AND OTHER MINORITY CONTRACTORS DEALING WITH STATES, FEDERAL AND ALSO WITH THE CITIES AND THE UNIONS AND THE LACK OF OPPORTUNITIES FOR OUR CONTRACTING COMMUNITY. I WOULD LIKE TO THANK ALL THE REPRESENTATIVES AND SENATORS WHO ARE PRESENT AT THIS CONGRESSIONAL INVESTIGATION.

I WANT TO INTRODUCE MIDWEST CONTRACTORS FOR PROGRESS. WE ARE A GROUP OF CONTRACTORS AND BUSINESS PEOPLE WHO ARE WORKING WITH DIFFERENT AGENCIES FROM ILLINOIS AND THE MIDWEST WHO CONTRACT WORK WITH CITY, STATE AND FEDERAL AGENCIES TO ACQUIRE A PORTION OF THE AVAILABLE WORK FOR OUR MEMBERS. WE FEEL OUR MAJOR CONCERNS ARE NEVER ACKNOWLEDGED BY THESE AGENCIES. WE HAVE SENT LETTERS TO THESE AGENCIES INFORMING THEM OF OUR PLIGHT.

OUR MAJOR PROBLEMS ARE AS FOLLOWS:

1. PAYMENTS FOR JOB COMPLETED

   OUR CONTRACTORS ARE NOT GETTING PAID IN A TIMELY MANNER FROM THE PRIME CONTRACTORS WHO ARE DOING BUSINESS WITH THE STATE AND CITY. SOME OF OUR CONTRACTORS ARE WAITING FROM SIX (6) MONTHS TO TWO (2) YEARS TO GET PAID FROM THE PRIME CONTRACTORS WHO ARE DOING BUSINESS WITH THE CITIES AND STATES. THERE IS NO MECHANISM SET UP WHEREBY THE CITIES AND STATES CAN PAY THE SUB-CONTRACTORS DIRECTLY IF HE IS NOT BEING PAID BY THE PRIME CONTRACTOR.

2. BANKING

SMALL BLACK BUSINESSES HAVE GREAT PROBLEMS IN ACQUIRING MONEY FROM BANKS AND LENDING INSTITUTIONS. WE FEEL THAT THE SBA IS ONE AREA THAT NEED TO INCREASE THE AVAILABILITY OF LOANS TO SMALL BLACK FIRMS. THE PROCESSING TIME TO ACQUIRE THE LOAN FROM THE INITIAL LOAN PACKAGE AND THE TIME THAT YOU ACTUALLY RECEIVE THE MONEY IS TOO LONG, (6 WEEKS TO 1 YEAR) AT WHICH TIME THE COMPANY COULD FOLD.

3. UNIONS

THE TRADE UNIONS ARE NOT HIRING ENOUGH YOUNG BLACK APPRENTICES WORKERS AND TRAINING THEM TO BE GOOD JOURNEYMEN TRADESMEN. WE NEED INPUT FROM THE CONGRESSMEN AND SENATORS TO SET RULES AND REGULATIONS WHEREBY THE UNIONS WOULD HAVE TO HIRE A LARGER PERCENTAGE OF BLACKS EVERY YEAR FROM EVERY PHASE OF CONSTRUCTION AND OTHER BUSINESSES THAT DEAL WITH LABOR TO INCREASE THEIR JOURNEYMEN STATUS IN THE UNIONS. ALSO, THE HIRING OF THE UNDEREMPLOYED FROM THESE COMMUNITIES. THE REASON BEING IS THAT THESE MAJOR UNIONS -- OPERATOR ENGINEERS, PLUMBING, IRONWORKERS, ETC., HAVE A SMALL BLACK MEMBERSHIP COMPARED TO THE NUMBER OF BLACK POPULATION IN THE CITY OF CHICAGO AND THE SURROUNDING COMMUNITIES.

4. TRAINING OF NEW YOUNG BLACK WORKERS

   THE PROBLEM IS THAT THESE WORKERS NEED TO BE TRAINED FROM THE FRESHMAN YEAR IN HIGH SCHOOL THROUGHOUT TRADE SCHOOL TO BE ABLE TO WORK WELL IN THE CONSTRUCTION INDUSTRY AS SKILLED WORKERS. THEY SHOULD BE ABLE TO READ BLUE PRINTS, RULERS AND ALSO BE ABLE TO DO SURVEYING. WE NEED MORE CARPENTERS, CEMENT FINISHERS, ASPHALT PAVERS, ETC.

5. ANOTHER PROBLEM AREA, FROM MY GATHERING OF INFORMATION FROM ACROSS THE STATE OF ILLINOIS AND THE MIDWEST, IN MOST SECTIONS, THE CONTRACTORS GETTING THE WORK ARE CONTRACTORS WHO HAVE NOT BEEN IN BUSINESS LONG AND WHO EITHER GIVE THE WORK BACK TO MAJORITY CONTRACTORS OR USE THEIR EQUIPMENT TO FULFILL HIS SUB-CONTRACTING OBLIGATIONS WITH THE PRIME CONTRACTOR. THESE CONTRACTORS ARE EMPLOYING CONTRACTORS FROM THE PRESUMPTIVE GROUP, I.E. WHITE WOMEN, TO CIRCUMVENT THE INTENTS OR PURPOSE OF DISADVANTAGE BUSINESS ENTERPRISE AND ESPECIALLY DBEs FOR WHATEVER REASON, DEPENDING ON THE PRIME CONTRACTORS TO FULFILL THE SUB-CONTRACTOR'S PORTION OF WORK.

   WE HAVE REQUESTED IDOT TO SET RULES WHERE THE PRIME HAS TO SUBMIT MINORITY CONTRACTORS AT THE TIME OF BID. AT ONE TIME THE PRIME CONTRACTOR WAS ALLOWED 5 DAYS, IDOT CHANGED IT TO

7 DAYS, OVER THE OBJECTION OF THE MINORITIES ON THE DBE/WBE ADVISORY COUNCIL. IF THE PRIME CONTRACTOR HAS 7 DAYS AFTER THE BID, HE WILL HAVE AN UNFAIR ADVANTAGE OVER THE DBE. THE PRIME CONTRACTOR WILL BE ABLE TO NEGOTIATE WITH MBEs KNOWING THAT IT WILL BE AWARDED THE CONTRACT, AND IT WILL BE IN A POSITION TO OBTAIN GREATER PRICE CONCESSIONS FOR GUARANTEED WORK. THIS WAY THE PRIME CONTRACTOR WILL BE ABLE TO OBTAIN A COMPETITIVE ADVANTAGE OVER THE DBE BY BEING ABLE TO PRACTICE THIS TYPE OF "BID SHOPPING."

LASTLY, THE RESIDENT ENGINEERS WITH THE CITIES AND THE STATE AGENCIES SEEM TO TAKE A SUPERIOR ATTITUDE WHEN THEY DEAL WITH SO-CALLED MINORITY CONTRACTORS. THE CONTRACTORS ARE TREATED UNFAIRLY ON THE JOB BECAUSE THE RESIDENT ENGINEERS HAVE NOT DEALT WITH MINORITY AND/OR SOCIALLY DISADVANTAGED CONTRACTORS BEFORE. UNDOUBTLY, THEY DON'T KNOW WHAT THEIR JOB TITLES ARE AND THEY SEEM TO WANT TO BE THE SUPERINTENDENT ON THE JOB WHEN DEALING WITH BLACKS AND NOT WORKING WITH THE CONTRACTORS TO GET THE JOB DONE IN THE TIME ALLOTED.

IN CLOSING, WE, THE DISADVANTAGED, SEEK YOUR ASSISTANCE IN RESOLVING THE AFOREMENTIONED MATTERS.

SOLUTIONS TO THE BARRIERS OF MINORITY PARTICIPATION ON THE DAN RYAN AND OTHER NATIONWIDE TRANSPORTATION PROJECTS

TESTIMONY BY

PETER MARTINEZ, EXECUTIVE DIRECTOR

HISPANIC AMERICAN CONSTRUCTION INDUSTRY ASSOCIATION (HACIA)

FIELD HEARINGS BY

SUB COMMITTEE ON PROCUREMENT INNOVATION AND MINORITY ENTERPRISE OF THE HOUSE SMALL BUSINESS COMMITTEE

CHAIRMAN: IKE SKELTON

DATE: AUGUST 8, 1988

The recent one goal amendment to the Surface Mass Transportation Act has created great inequities in the awarding of contracts by IDOT on the Dan Ryan expressway in Chicago and on projects in other parts of the state. Under the one goal DBE system, 70% to 90% of the DBE set aside contracts went to White female owned firms, the legitimacy of which is questionable in a number of cases. The Black and Hispanic Caucuses in Congress should immediately take action to repeal this amendment and insure that efforts to apply it to other federal programs is not successful. The entire Chicago area Congressional delegation should pledge itself to the same action.

The setting of minority goals, however is not enough to insure the success of a minority business set aside program. States receiving federal funds should be required to develope a comprehensive minority program with rigorous enforcement procedures.

In the state of Illinois, the following improvements need to be made:

1. The state legislature and IDOT should communicate in writing to the congress and the Federal Department of Transportation their recommendation to return to the 2 goal system for MBE and WBE's as opposed to the new 1 goal system. Because, as the Dan Ryan and the Martin Luther King bridge experiences prove, minorities are disenfranchised and squeezed out by questionable white WBE's under this system.

2. Steps should be taken immediately by IDOT to inform prime contractors that they will be expected to use minority contractors at ratios to women contractors that prevailed before the change in the law.

3. For Projects in the Chicago Area (Dist. 1) minority contracting goals of 30% (as a minimum) need to be set. Fifteen percent is inadequate in a city which is over 60% minority with unemployment rates which are twice to four, time that of the White community.

4. Minority skilled and unskilled labor goals of 60 plus % should be set with no racial and ethnic sub goals. If sub goals are established, the ratio of Blacks to Hispanics should be maintained at 2 to 1, commensurate with their respective percentage in the population.

5. The certification process should be tighten up to prevent fronts from being certified. Special attention should be given to majority owned WBE's because they are so easily converted from male owned companies. We belive that this effort will also help protect legitimate WBE's who deserve their own set-aside goals.
6. Fraudulent attempts to pass for WBE/MBE's should be immedi-ately indited and brought to trial, as the law stipulates.
7. General contractors should be required to name their MBE and WBE subs with their prices when they submit their bid to IDOT. Failure to do so should disqualify the bid. This procedure will allow IDOT to know what the ratios are and who the contractors are. This procedure will also reduce bid shopping of minorities and help to ensure them an equitable margin of profit.
8. Regulations should also be established requiring the prime contractor to pay his subs within 5-7 days of the time that he is paid.
9. We agree with Midwest Contractors for Progress that regulations requiring paving contractors to own asphalt plants, are discriminatory and we support their demand for the abolition of this requirement.
10. A greater percentage of minority architects and engineers should be used by IDOT and they should be allowed to seek contracts as joint ventures so that they can assemble the capabilities required that very often does not exist in a single small minority firms.

STATEMENT OF REVEREND WILLIE BARROWS, PRESENTED BY REVEREND ED RIDDIC

MADAME CHAIRPERSON COLLINS AND CONGRESSMAN HAYES WE EXPRESS APPRECIATION TO THIS PANEL FOR EXTENDING THE OPPORTUNITY TO US TO TESTIFY AT THIS HEARING. AS YOU KNOW I HAVE SERVED AS CHAIR OF THE D.R.I.V.E. COALITION SINCE ITS INCEPTION. THIS COALITION HAS ASSUMED THE RESPONSIBILITY FOR MONITORING THE DISTRIBUTION OF CONTRACTS AND THE PLACEMENT OF SKILLED AND UNSKILLED LABORERS ON THE DAN RYAN EXPRESSWAY. THE DAN RYAN PROJECT AMOUNTS TO A $210 MILLION ENTERPRISE. OUR EARLIEST FINDINGS WERE THAT BLACKS AND HISPANICS WERE BEING DENIED EQUAL ACCESS TO THE CONTRACTUAL SET ASIDES ESTABLISHED UNDER PROVISIONS OF THE SERVICE TRANSPORTATION AND UNIFORMED RELOCATION ASSISTANCE ACT OF 1987.

FIRST WE FOUND THAT BLACKS HAD RECEIVED LESS THAN 3% OF THE TOTAL CONTRACTS LET UNDER THE SO CALLED DISADVANTAGED BUSINESS ENTERPRISE (D.B.E.'S) WHILE WHITE FEMALE CONTRACTORS RECEIVED NEARLY 70% OF THE TOTAL CONTRACTS AWARDED. INDEED IN ONE INSTANCE REPRESENTATIVES YVETTER YOUNG TESTIFIED BEFORE A COMMITTEE COMPRISED OF SOME PRESENT THIS MORNING THAT WHITE OWNED W.B.E. RECEIVED 90% OF THE CONTRACTS AWARDED FOR CONSTRUCTION OF THE MARTIN LUTHER KING BRIDGE IN THE EAST ST. LOUIS, ILLINOIS AREA. SECONDLY, WE SOUGHT AND SUCCESSFULLY SECURED AN ADJUSTMENT BUT THAT ADJUSTMENT WHILE AN IMPROVEMENT, DID NOT GO FAR ENOUGH IN ADDRESSING THE INEQUITIES THAT WERE PRESENT IN THE DISTRIBUTION OF DAN RYAN CONTRACTS AND IN THE PLACEMENT OF THE LABOR FORCE. IN FACT WE LEARNED THAT THE GOVERNOR'S COMMITMENT TO CONFER WITH THE DEPARTMENT OF TRANSPORTATION WAS NOT AN ADEQUATE RESPONSE.

INEQUITABLE SET ASIDE PROVISIONS UNDER AMENDMENTS TO THE SURFACE TRANSPORTATION ACT. FOR THESE PROVISIONS PLACE BLACKS, HISPANICS, OTHER MINORITIES, FEMALES AND HANDICAPPED PERSONS UNDER ONE DESIGNATION. THIS MEANS THAT ALL OF THESE GROUPS MUST COMPETE, INDEED CONTEND FOR A VERY NARROW SLICE OF THE CONTRACTUAL "PIE".

WE HAVE CONTENDED THAT THIS IS NOT FAIR AND THAT IT CAUSES CONFUSION AND CONFLICT. FOURTH, WE HAVE HEARD NOTHING THAT INDICATED ANY SUBSTANTIAL CHANGE IN WHAT HAS TAKEN PLACE. A NUMBER OF COMPLAINTS HOWEVER HAVE BEEN RECEIVED FROM PERSONS SOME WITH AS MUCH AS 15 YEARS EXPERIENCE WHO WERE HIRED FOR A FEW WEEKS AND THEN LAID OFF WITHOUT NOTICE OR IN SOME INSTANCES WHO WERE NOT HIRED AT ALL THOUGH THEY PRESENTED VALID UNION CREDENTIALS.

APART FROM THE SO CALLED ADJUSTMENT MADE IN AGREEMENT WITH THE GOVERNOR, AND THE "PROMISE" ADDITIONAL WORK ON ARTERIAL AND ACCESS ROUTES, OPERATION PUSH HAS BEEN APPRISED OF NOTHING THAT SUBSTANTIALLY SHOWS IMPROVEMENT OVER THE MARCH AND APRIL PERIOD WHEN WE WERE RAISING THESE ISSUES.

OPERATION PUSH SUPPORTS THE CONGRESSIONAL BLACK CAUCUS AND THE MINORITY BUSINESS LEGAL DEFENSE FUND HEADED BY FORMER CONG. PARREN MITCHELL AND ADVOCATES ENACTMENT OF THE AMENDMENT PROPOSED BY CONGRESSMAN GUS SAVAGE TO REMEDY THE PRESENT INEQUITABLE

SYSTEM. WE CALL YOUR ATTENTION TO THE FACT THAT THE CONFERENCE REPORT ON THE MINORITY SET ASIDE PROVISIONS STATED THAT THE INTENT OF THE NEW AMENDMENT WAS THAT NO PRESUMPTIVE GROUP SHOULD RECEIVE A DISPROPORTIONATE SHARE OF THE CONTRACTS AND "FEDERAL HIGHWAY AUTHORITY'S CHIEF COUNSEL, ANTHONY J. MCMAHON NOTED IN RESPONSE (DATED FEB. 22ND)...THAT ANY PREFERENCE FOR ONE PRESUMPTIVELY DISADVANTAGED GROUP TO THE EXCLUSION OF ANOTHER WOULD BE CONTRARY TO LAW AND FEDERAL REGULATIONS."

THE GOVERNOR HAS THE AUTHORITY TO MANDATE AND ESTABLISH REGULATIONS TO ASSURE THAT THIS TAKES PLACE--BUT HE HAS NOT CHOSEN TO DO SO. BY CONTRAST OTHER STATES HAVE MONITORED MORE SENSITIVELY THESE PROCEDURES AND ASSURED BLACK AND HISPANIC CONTRACTORS A MORE EQUITABLE SHARE EVEN UNDER THE CURRENT UNBALANCED AND INEQUITABLE SYSTEM. WE BELIEVE THAT THE ONE GOAL SYSTEM IS NOT ONLY UNFAIR TO BLACKS AND HISPANICS IT IS HORRENDOUS TO THE HANDICAPPED. IT ALSO BECOMES A SHIELD THAT PREVENTS MINORITY FEMALE CONTRACTORS FROM RECEIVING THEIR JUST PROPORTION OF THE CONTRACTUAL AWARDS.

IT IS OUR UNDERSTANDING THAT THE US DEPARTMENT OF TRANSPORTATION HAS CONSIDERED SIGHTING I.D.O.T. FOR DISCRIMINATION. MAY WE SUGGEST THAT THE EVIDENCE CALLS FOR SUCH.

I.D.O.T. HAS A BUDGET OF $3.7 BILLION, $2.9 BILLION IN HIGHWAY FUNDS OF ALL TYPES. THERE ARE OVER 8,000 BUDGETED SLOTS IN THAT DEPARTMENT AND THE HIGHWAY CONSTRUCTION BUDGET IS REPORTED AT IN EXCESS OF $820 MILLION. DURING THIS FISCAL YEAR THE DEPARTMENT IS SCHEDULED TO RECEIVE UPWARD TO $128 MILLION IN BUILD ILLINOIS FUNDS AND THE DEPARTMENT PAYS APPROXIMATELY $239 MILLION IN SALARIES.

THE DEPARTMENT HAS MORE THAN 1,100 ENGINEERS FEWER THAN 50 ARE BLACK. THERE ARE ONLY FIVE(5) BLACK TECHNICAL ADVISORS AND FEWER THAN 75 BLACK TECHNICAL MANAGERS. OF 648 ENGINEERING TECHNICIANS FEWER THAN 100 ARE BLACK AND THERE ARE FEWER THAN 225 BLACK PROFESSIONALS.

MADAME CHAIRPERSON AND CONGRESSIONAL MEMBERS THIS IS THE REPORT WE HAVE AS OF THE APRIL-MAY PERIOD 1988 AND WE HAVE RECEIVED NO INFORMATION SUBSTANTIALLY MODIFYING THESE FIGURES. OVER A FOUR YEAR PERIOD FEWER THAN 15 CONTRACTS HAD BEEN AWARDED TO BLACK ENGINEERING CONSULTING FIRMS. THE LAST REPORT RECEIVED IN OUR OFFICE INDICATED THAT ONLY ONE(1) HAD BEEN AWARDED SINCE JANUARY, 1988 FOR THIS FISCAL PERIOD.

ALL OF THESE GRIEVANCES CONSTITUTE A DENIAL OF OUR RIGHTS AS CITIZENS BUT THEY ALSO IGNORE SUCH BITTER REALITIES AS THE EXISTENCE OF A 23.6% BLACK UNEMPLOYMENT RATE IN THE CITY OF CHICAGO. THE AMERICAN DEMOGRAPHIC MAGAZINE IN A 1987 STUDY, MOREOVER DISCLOSED THAT CHICAGO WAS LOOSING GROUND AS A LOCATION FOR BLACK BUSINESS GROWTH, PARTICULARLY IN THE CONSTRUCTION INDUSTRY.

D.R.I.V.E IS CONCERNED ABOUT STATE WIDE WORK FOR THE ILLINOIS DEPARTMENT OF TRANSPORTATION. THIS STATE HAS $113 MILLION IN AIRPORT CONSTRUCTION AND IMPROVEMENT FUNDS, A SUBSTANTIAL PORTION OF WHICH WILL GO TO THE CHICAGO AREA. THERE ARE AT LEAST 10 FLOOD CONTROL PROJECTS IN THE CHICAGO METROPOLITAN AREA UNDER I.D.O.T.'s JURISDICTION. WE ARE ALSO ADVISED THAT R.T.A. HAS SUBMITTED A CALLING FOR THE EXPENDITURE OF $450 MILLION PER YEAR FOR THE NEXT TEN YEARS--OR $4.5 BILLION. WE SEEK OUR SHARE OF THIS WORK AND URGE THIS COMMITTEE TO TAKE THOSE STEPS NECESSARY TO ASSURE THAT WE RECEIVE OUR FAIR SHARE AS THERE IS NO GUARANTEE IN THE EXECUTIVE DEPARTMENT THAT WE WILL GAIN IT OTHER WISE. INDEED THE CLEAR IMPRESSION IS THAT WE WILL BE VICTIMS OF TAXATION WITHOUT REPRESENTATION.

RECOMMENDATIONS

FIRST AND FOREMOST, OUR HIGHEST PRIORITY IS THE ELIMINATION OF THE LANGUAGE IN THE LAW WHICH DEFINES WOMEN AS DISADVANTAGED BUSINESS AND ITS ATTENDANT ONE GOAL STANDARD. HERE WE WISH TO MAKE IT CLEAR THAT WE DO NOT OPPOSE FEMALE OWNED BUSINESSES AND WE SUBSCRIBE TO THE VIEW THAT SOME WHITE FEMALE OWNED BUSINESSES ARE DISADVANTAGED. THE ISSUE THOUGH, IS THE 90% MONOPOLY THAT WHITE MALES HAVE SHOULD NOT A SET ASIDE BE CARVED OUT OF THE 90% RATHER THAN CLUTTERING AN ALREADY INADEQUATE AND CROWDED TEN PERCENT MINORITY SET ASIDE. WE CLEARLY THINK IT SHOULD.

CONSISTENT WITH A RECOMMENDATION OF SEN. COLLINS, WE URGE I.D.O.T. TO BUDGET FUNDS FOR ASSISTANCE TO MINORITY CONTRACTORS (SUCH AS A REVOLVING LOAN FUND TO ASSIST THESE GROUPS IN FINANCING THEIR WORK.).

WE ALSO URGE THAT I.D.O.T. STUDY THE OHIO MINORITY BONDING ASSISTANCE PROGRAM AND ESTABLISH SUCH A PROGRAM IN ILLINOIS.

I.D.O.T. SHOULD BE COMPELLED BY THIS OVERSIGHT COMMITTEE TO REVIEW ALL OF ITS POLICIES AND PROCEDURES FROM CERTIFICATION TO CONTRACT BID LETTING TO ENSURE MORE EQUITABLE DISTRIBUTION OF WORK UNDER ITS JURISDICTION. GOVERNOR THOMPSON SHOULD TAKE A MORE ACTIVE ROLE IN THE INSTITUTION OF ADMINISTRATIVE PROCEDURES THAT WILL ASSURE IMPLEMENTATION OF A FAIR AND JUST SYSTEM.

TODAY, MINORITY UNEMPLOYMENT IN THE CITY OF CHICAGO EXCEEDS 23% WITH MINORITY CONSTRUCTION UNEMPLOYMENT NEARLY THREE AND A QUARTER TIMES THAT AMOUNT. WE ARE DEALING WITH A HIGHLY COMBUSTIBLE SUBSTANCE WHICH--ABSENT OUT SERIOUSLY ADDRESSING IT AS A CRISIS, PUTS THE STATE AT RISK.

SYSTEMIC ELIMINATION OF THE BLACK WOMAN

TESTIMONY PRESENTED BY CAROLYN JORDAN, BOARD MEMBER OF THE ILLINOIS ASSOCIATION OF BLACK WOMEN BUSINESS OWNERS & PRESIDENT OF CAROLYN JORDAN & ASSOCIATES, CONTRACTORS.

FIELD HEARINGS BY: THE 100th CONGRESS, UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON SMALL BUSINESS - SUB COMMITTEE ON PROCUREMENT, INNOVATION AND MINORITY ENTERPRISE DEVELOPMENT.

CHAIRMAN: THE HONORABLE IKE SKELTON

DATE: AUGUST 8, 1988

GREETINGS, LADIES & GENTLEMEN AND WELCOME TO THE GREAT STATE OF ILLINOIS AND PROUD CITY OF CHICAGO. SPECIAL THANKS TO THE HONORABLE CONGRESSMAN HAYES FOR COORDINATING THIS HEARING AND ALLOWING OUR ORGANIZATION THE OPPORTUNITY TO SHARE & VOICE OUR CONCERNS. THE ILLINOIS ASSOCIATION OF BLACK WOMEN BUSINESS OWNERS IS A NON-PROFIT, MEMBERSHIP AND NETWORKING ORGANIZATION OF 1,033 (ONE-THOUSAND THIRTY-THREE) MINORITY WOMEN BUSINESS OWNERS. THE ORGANIZATION PROVIDES AN ADVOCACY BASE FOR MINORITY WOMEN BUSINESS OWNERS AND SERVES AS A DATA BASE TO DISSEMINATE RELEVANT INFORMATION THROUGHOUT OUR NETWORK. WE PROVIDE TECHNICAL ASSISTANCE TO OUR MEMBERSHIP AND PROVIDE AN OPEN FORUM FOR ISSUES AFFECTING THE MINORITY FEMALE BUSINESS OWNERS. THE MOST OUTSTANDING ISSUES CONFRONTING MOST BLACK AND MINORITY WOMEN TODAY ARE THE BARRIERS IN CONTRACTING THAT CARRY A POLITE BUT LETHAL SYNDROME (PBLS), KNOWN TO BLACK WOMEN AS THE ONE GOAL DISADVANTAGE BUSINESS ENTERPRISE (DBE) WHERE ALL MINORITIES ARE LUMPED TOGETHER.

THE RESULT OF COMBINING THE MBE AND WBE GOALS INTO ONE HAS VERTICALLY ELIMINATED THE PARTICIPATION OF THE BLACK FEMALE FROM THE CONTRACTING INDUSTRY. MOST OF THE WHITE MALE, PRIME CONTRACTORS, ARE NOW SUB-CONTRACTING TO THE WHITE FEMALE, SINCE THE NEW LAW MADE IT POSSIBLE. BASICALLY THE SYSTEM DISCRIMINATES AND THE PEOPLE THAT IMPLEMENT THE SYSTEM CONDONE A SYSTEM THAT ALLOWS ONLY WHITE MALES AND WHITE FEMALES THE OPPORTUNITY TO WORK AND EARN A LIVING WHILE THE BLACK AND MINORITY WOMEN SIT BACK AND GET MORE AND MORE FRUSTRATED UNTIL SHE QUITS OR GOES OUT OF BUSINESS FOR LACK OF WORK.

THE INTENT OF THE LAW, LADIES AND GENTLEMEN, IS TO MAXIMIZE PARTICIPATION OF MINORITIES AND WOMEN WITHIN AN INDUSTRY THAT HAS BEEN DOMINATED BY MEN AND TO PREVENT DISCRIMINATION AGAINST WOMEN IN THIS INDUSTRY. HOWEVER, THE ONE GOAL SYSTEM (DBE) IS SYSTEMATICALLY EXCLUDING BLACK WOMEN FROM THE SUB-CONTRACTING AND CONTRACTING INDUSTRY. THE INTENT OF CONGRESS HAS NOT BEEN REALIZED, BECAUSE THE PEOPLE THAT IMPLEMENT THE LAW CONTINUE TO DISCRIMINATE AGAINST BLACK AND OTHER MINORITY WOMEN. FOR EXAMPLE, IN REVIEWING THE STATISTICS FOR CONTRACT DOLLARS ALLOCATED TO BLACK AND MINORITY WOMEN FOR THE CITY OF CHICAGO AND THE STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, BLACK WOMEN RECEIVED LESS THAN 2% (TWO PER-CENT) OF THE TOTAL DOLLARS ALLOCATED. THIS UNDER UTILIZATION OF BLACKS AND MINORITY WOMEN REPRESENTS A VERY SERIOUS PROBLEM FOR COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS. THERE ARE MANY LOOP HOLES IN THE SYSTEM THAT NEED TO BE ADDRESSED. FOR EXAMPLE, A BLACK FEMALE CONTRACTOR IS AWARDED A SUB-CONTRACT, COMPLETES THE CONTRACT IN A GOOD WORKMANLIKE, WORK-WOMANLIKE MANNER BUT THE PRIME CONTRACTOR REFUSES TO PAY THE SUB-CONTRACTOR.

AS A RESULT OF NON-PAYMENT, THE SUB-CONTRACTOR EXPERIENCES SEVERE CASH FLOW PROBLEMS. ON THE OTHER HAND, THE PROJECT'S OWNER HAS REGULARLY PAID THE WHITE MALE CONTRACTOR FOR THE SUB-CONTRACTOR'S WORK BUT THE PRIME DELIBERATELY WITHHOLDS THE SUB-CONTRACTORS PAYMENTS FOR 30, 60, 90, 120 DAYS AND FORCES THE SUB-CONTRACTOR OUT OF BUSINESS. ONCE THE SUB-CONTRACTORS GO OUT OF BUSINESS AND FILES BANKRUPTCY, THE PRIME CONTRACTOR KEEPS THE SUB-CONTRACTOR'S MONEY AND THAT MONEY BECOMES CLEAR PROFIT TO THE PRIME CONTRACTOR.

THERE IS NO PROTECTION FOR THE SUB-CONTRACTOR, NOR ANY MECHANISM TO ADDRESS THESE TYPES OF PROBLEMS. THE ONLY RECOURSE A SUB-CONTRACTOR HAS IS THE COURT SYSTEM. THE ATTORNEY'S BILL IS OFTEN TIMES MORE THAN THE PROFIT BUILT IN YOUR SUB-CONTRACT. SMALL DISADVANTAGED FIRMS ARE THEN FORCED TO EXPEND EXTRA DOLLARS TO RECOVER EARNED INCOME. THE PRIME CONTRACTOR IS AWARE OF YOUR FINANCIAL DILEMMA SINCE HE IS WITHHOLDING YOUR PAYMENTS. THE (PBLS) POLITE BUT LETHAL SYNDROME, PRESENTS BARRIERS THAT BLACK WOMEN HAVE A DIFFICULT TIME TRYING TO OVERCOME, JUST TO SURVIVE WITHIN THE INDUSTRY. THE ACCESS TO LEGAL ASSISTANCE IS VERY HIGH AND OFTEN TIMES UNAFFORDABLE. THE BLACK WOMAN'S STRUGGLE IS WITHOUT END BECAUSE YOU FIGHT TO GET THE JOB, FIGHT TO FINISH THE JOB AND FIGHT FOREVER TO GET PAID.

AGAIN, THERE IS NO SYSTEM TO PENALIZE PRIME CONTRACTORS THAT ARE WRONG DOERS. THE COURT SYSTEMS APPEAR TO BE INSENSITIVE AS IT RELATES TO THE ABUSES OF BLACK FEMALES BY WHITE MALE CONTRACTORS. THE "GOOD OLD BOY NETWORK", IF YOU WILL, INCLUDES CONTRACTORS, LAWYERS, GOVERNMENTAL ADMINISTRATORS AND MANY OTHERS, ALL OF WHOM DENY THAT THEY ARE PREJUDICED BUT THEIR ACTIONS SPEAK LOUDER THAN THEIR COMMENTS.

FOR EXAMPLE, I WAS INVOLVED IN A JOINT-VENTURE PROJECT FOR OHARE FIELD. MY PARTNER AND I SUCCESSFULLY COMPLETED THE PROJECT AND UPON COMPLETION WE WERE TO SPLIT THE PROFIT. MY PARTNER, PETER DEL RICCO, A WHITE MALE, REFUSED TO HONOR THE WRITTEN CONTRACT. I SUED FOR RELIEF AND DURING THE TRIAL, MY PARTNER, PETER, STATED THAT HE ONLY ENTERED INTO THIS AGREEMENT BECAUSE MY FACE WAS BLACK AND THAT IT WAS NECESSARY TO USE A BLACK FEMALE TO SECURE THE CONTRACT. FURTHERMORE, THAT HE NEVER INTENDED TO HONOR THE JOINT-VENTURE AGREEMENT AND THEREFORE I WAS NOT ENTITLED TO MY SHARE OF THE PROFIT NOR EQUAL DISTRIBUTION OF OUR EQUIPMENT. HERE IS A WHITE MALE, THAT GIVES JUDICIAL BINDING TESTIMONY FROM THE WITNESS STAND OF WILLFUL WRONG DOINGS AND ABSOLUTELY NOTHING HAPPENS TO THIS PERSON. THE SYSTEM CONDEONS THIS TYPE OF BEHAVIOR THROUGH ITS SILENCE. I HAVE INCURRED OVER $100,000. (ONE HUNDRED THOUSAND DOLLARS) IN LEGAL FEES, FIGHTING A CASE THAT SEEMS HOPELESS. MY PARTNER HAS BEEN ALLOWED TO KEEP MY MONEY AND EQUIPMENT AND ENJOY THE FRUITS OF MY LABOR. HIS ATTORNEYS, DONALD O'BRIEN AND KATHLEEN O'DEKIRK, HAVE BEEN SUCCESSFUL IN SERVING COURT ORDERS THAT SANCTION THE DISCRIMINATORY ACTIONS OF MY PARTNER. THE ATTORNEY O'BRIEN, REPRESENTED THE JOINT-VENTURE, AND THEN WHEN MY PARTNER AND I BEGAN TO DISAGREE, ATTORNEY O'BRIEN REPRESENTED MY PARTNER AGAINST ME IN THE LITIGATION AND HE CONTINUES TO DO SO TODAY. I BELIEVE THAT ATTORNEY O'BRIEN HAS A BLATANT CONFLICT OF INTEREST, BUT THE COURT DISAGREES.

THE POLITE BUT LETHAL SYNDRONE (PBLS) IS CONSTANTLY WORKING TOWARDS THE DEMISE OF THE BLACK WOMAN'S RIGHTS. I ASK YOU, WHAT IS THE COST AND COLOR OF JUSTICE?

AS A RESULT OF FIGHTING FOR JUSTICE AND EQUALITY, I HAVE BEEN BLACK-BALLED BY OTHER WHITE MALE CONTRACTORS WITHIN THE CONSTRUCTION INDUSTRY. WHEREAS, THE GOOD OLD BOY NETWORK, IF YOU WILL, HAS DECIDED TO LIMIT MY PARTICIPATION IN CONTRACTING. SINCE THE THREATS OF BODILY HARM AND HARASSMENT ARE NOT EFFECTIVE BARRIERS, THE POWER STRUCTURE HAS DECIDED NOT TO PAY ME FOR WORK COMPLETED ON TWO OTHER PROJECTS FOR A TOTAL OF $400,000. (FOUR HUNDRED THOUSAND DOLLARS). I HAVE BEEN SUED BY EACH OF THE CONTRACTORS AND FORCED INTO THE LEGAL SYSTEM AS A DEFENDANT, STRIPPED OF ALL FINANCIAL RESOURCES. THESE ARE VERY DIFFICULT BARRIERS TO OVERCOME. THEY ARE LEGAL BUT LETHAL, ALL TO DETER BLACK AND MINORITY WOMEN CONTRACTORS.

BUT WE MUST NEVER GIVE UP BECAUSE ANYTHING WORTHWHILE IS WORTH FIGHTIN'FOR. WHITE MALES ARE RELUCTANT TO GIVE-UP POWER AND HAVE BEEN ALLOWED TO DEVELOP AN INSATIABLE GREED FOR MONEY AND POWER WHICH INHIBITS THEIR SENSE OF VISION AND RESPECT FOR THE LAW.

IN SUMMARY, CONGRESS HAS CREATED ITS OWN MINORITY, THE WHITE FEMALE ON THE BEHALF OF THE WHITE LOBBYISTS. WE MUST NOW UNDO THE ILLS OF MAN AND RESTORE JUSTICE TO THE REAL MINORITY GROUPS- BLACKS, HISPANICS, ASIANS AND BLACK WOMEN. REMEDIES, AS I SEE THEM ARE: RETURN TO THE TWO GOAL SYSTEM; A CERTIFICATION PROCESS FOR BANKS, BONDING COMPANIES, INSURANCE AGENTS AND EQUIPMENT MANUFACTURERS, WHEREAS THEY CERTIFY TO DO BUSINESS WITH THE MINORITY CONTRACTOR, AS WELL AS THE PRIME, AND HOLD THE PRICE CONSTANT. THE THIRD REMEDY IS AN ARBITRATION SYSTEM FOR THE RESOLUTION OF DISPUTES BETWEEN THE PRIME CONTRACTOR AND THE SUB-CONTRACTOR THAT EXCLUDES ANY AND ALL COURT ACTION.

ARBITRATION IS MANDATORY AND SHOULD BE A PART OF THE CONTRACT DOCUMENTS AND SIGNED BY ALL PARTIES. ALL DECISIONS OF THE ARBITRATOR SHOULD BE BINDING. THE TEAM OF ARBITRATORS WILL BE EQUALLY DIVIDED BETWEEN MINORITIES, WHITES AND WOMEN. CRIMINAL LAWS MUST BE PROMULGATED TO PROSCRIBE WRONGFUL CONDUCT BY BANKS, SURETY COMPANIES, INSURANCE COMPANIES AND LENDERS WHICH DISCRIMINATE AGAINST MINORITIES AND BLACK CONTRACTORS. THE CRIMINAL PRESCRIPTION MUST CONTAIN PENALTIES TO DETER WRONG DOERS THAT DISCRIMINATE. THE PENALTY SHOULD INCLUDE A MINIMUM OF ONE YEAR'S INCARCERATION (THE PENITENTIARY). LASTLY, BUT MOST IMPORTANTLY, SUSPENSION FOR ONE YEAR FROM PARTICIPATING IN ALL GOVERNMENTAL CONTRACTS AND THE POSSIBILITY OF BEING BARRED, UPON CONVICTION OF A SECOND OFFENSE.

WOMEN'S BUSINESS
DEVELOPMENT CENTER

TESTIMONY BEFORE CONGRESSIONAL REPRESENTATIVES
U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON PROCUREMENT, INOVATION AND MINORITY ENTERPRISE DEVELOPMENT

SUBMITTED BY
WOMEN'S BUSINESS DEVELOPMENT CENTER
AUGUST 8, 1988

We are here before you today to testify on behalf of women business owners.

The WOMEN'S BUSINESS DEVELOPMENT CENTER is a non-profit organization committed to the economic development and self-sufficiency of women and their families. The Center provides counseling, entrepreneurial training, support groups, networking, financial assistance and--as a priority--government and private sector procurement opportunities for women business enterprises. We work closely with the federal government, State of Illinois, City of Chicago, Chicago Public Schools, Metropolitan Sanitary District and Chicago Park District providing assistance in identifying WBE suppliers and vendors, training and consulting in the area of WBE contracts, subcontracts and procurement, and are now providing certification of WBE's for the private sector. We work with thousands of women business owners in themetropolitan Chicago area.

Government has a less than stellar record of purchasing from women business enterprises. We wish to commend Congressman Hayes and Skelton and other members of the Subcommittee on Procurement, Innovation, and Minority Enterprise Development for their willingness to research and investigate the Department of Transporation DBE program and its impact on minority and women owned business. Additionally, we commend the Subcommittee members for their desire to provide a strong enforceable set of goals, guidelines and implementation procuedures to provide increased business to minority and women business enterprises, those groups who, historicolly have not had these opportunities and who, historically have been discriminated against.

CAROL DOUGAL, DIRECTOR · HEDY M. RATNER, DIRECTOR
230 NORTH MICHIGAN, SUITE 1800 · CHICAGO, ILLINOIS 60601 · (312) 853-3477

The **WOMEN'S BUSINESS DEVELOPMENT CENTER** and the thousands of women business owners with whom we work encourage the reconfiguration of the Disadvantaged Business Enterprise/Women Business Enterprise/Minority Business Enterprise program into separated categories. We would also like to propose an increase in the federally mandated setasides and an increase in the allocation for women and minority businesses.

The fastest growing segment of the economy in the United States today is women owned business. By the year 2000, 50% of all businesses in this country will be women owned. In Illinois alone there are 130,000 women owned businesses, most in the metropolitan Chicago area. Because of historical discrimination and lack of business enterprise opportunities, we propose that percentage goals for minorities and women be increased and placed in separate categories.

Placing women and minorities into the DBE category makes it impossible to track the progress and growth of either group and pits minorities and women against one another, a circumstance to be avoided at all costs. All those who have been historically disenfranchised should work together to increase minority and women business enterprise participation in government and private sector contracting in the free enterprise system. The **WOMEN'S BUSINESS DEVELOPMENT CENTER** is a member of the Alliance, a coalition of minority and female contractor associations including Hispanic American Construction Industry Association, Black Contractors United, Federation of Women Contractors, Midwest Contractors for Progress so that we can all work together to further the economic development goals of minorities and women.

Labor research indicates that the earnings of people in our society are not equitable. White males earn more than minority males who earn more than white females who earn more than minority females. Business statistics appear to parallel employment statistics. As thinking people realized that affirmative action is not limited to jobs,opportunities were created for women and minorities to start and expand their own businesses and compete in previously inaccessible markets. Government led the way--so came the enabling legislation and the accompanying certification and monitoring processes at the federal, state and city levels.

—When we speak of historial disenfranchisement, we include both minority and majority women as well as male minorities. Minority and majority women as well as male minorities have been disenfranchised. Federal and local contracting goals have been established and implemented to overcome the legacy of historic racism and sexism that have prevented the minority and female owned businesses from competing in the mainstream.

However, unfortunately there are abuses. Goals and guidelines are established for businesses at least 51% owned and operated by minorities and women. The **WOMEN'S BUSINESS DEVELOPMENT CENTER** and other organizations here today are concerned about the abuse of the goals and guidelines and implementation of these business opportunities by "fronts" who are not female or minority owned and controlled. Although the federal and local government agencies have imposed stringent regulations and certification requirements to expose businesses which are not 51% owned and operated by women and minorities, there are some who unfortunately slip through. We support even more stringent certification requirements and pre-award and post-award monitoring to ameliorate these abuses.

Thank you for allowing the WOMEN'S BUSINESS DEVELOPMENT CENTER to present our recommendations to this august body.

CASTLE
CONSTRUCTION CORPORATION
1047 W. 115th Street • Chicago, Illinois 60643
(312) 468-4900

IMMEDIATE RELEASE PAGE: 1 OF 6

Testimony offered to Subcommittee on Procurement,
Innovation and Minority Enterprise Development:
House Committee on Small Business
Monday, August 8, 1988

Federal Building
219 S. Dearborn St.
Chicago, IL

By Marilu Meyer, President
Castle Construction Corporation
1047 W. 115th Street
Chicago, IL 60643
(312) 468-4900

Thank you for the opportunity to speak to you today regarding the impact of existing laws and regulations on MBE/WBE's and government procurment.

My name is Marilu Meyer and I am president and owner of Castle Construction Corporation which was founded in 1980. We are located on the far south side of Chicago and are certified as a WBE.

There are two basic underlying problems that WBE/DBE/MBE/SBE'S have once they are in any of the present Federal mandated programs: (1) Certification problems ranging from lack of monitoring and lack of consistency of application to lack of policing of compliance and (2) the problem of financing.

A. CERTIFICATION & MONITORING:

The first problem facing WBE's is not only "how do I get certified but, by whom do I get certified!"

WBE's interested in seeking Federal Contracts at the General Contractor and first-tier sub-contracting level are often dealing with Federal government for the first time. The certification chaos is monumental. For the Department of Transportation (DOT) we are considered a Disadvantaged Business Enterprise (DBE); for the Agency for Internationals Development (AID) we are considered a Women Business Enterprise (WBE). For the Department of State, we are a Small Business Enterprise (SBE). For the Department of Commerce we (non-minority women) are NOT considered at all.

This confusion results from the slight differences and application rendered by the various department's regulations in "support" of E.O. 11625 and E.O. 12138. Women-owned businesses need crystal-clear clarification regarding WBE/DBE/MBE/SBE regulations in the procurement and financial assistance programs of all Federal agencies. An excellent step in that direction is HR 5050 recently introduced in the 100th Congress, and I want to thank those of you who are co-sponsors of the proposed legislation.

There MUST be a legitimate certification process and a strong monitoring process for all legitimate WBE/DBE/MBE small business concerns to be allowed equal access to the procurement process.

B. FINANCING:

The second problem facing Women Business Enterprise's (WBE) is adequate financing. Access to commercial credit is essential for economic activity. The Equal Credit Opportunity Act was passed to promote the availability of credit to all credit-worthy applicants without regard to race, color, religion, national origin, sex, marital status, or age.

I would ask that Congress consider legislation requiring banks and other lending institutions (whether in or out of Federal Reserve system) to provide under the Freedom of Information Act their individual lending profiles by zip code, race, and sex. The Equal Credit Opportunity Act has achieved moderate success in providing equal access to consumer credit, but not in business and commercial transactions. The Federal Reserve Board has provided "exemptions" under Regulation "B" for commercial credit transactions. As a member of the Small Business Advisory Council of the Federal Reserve Board of this region, I have requested information reqarding the percentage of commercial loans approved for non-minority, minority, women owned businesses and have been informed by the Federal Reserve Small Business Council that the information does not exist. Only when that information is available and the results are seen, will small business owners see if their banks are, in fact, helping or impeding the growth of growth of minority and women owned businesses. WBE/DBE/MBE's could certainly support HR 1897 and HR 2577.

I certainly won't bore you with my own less than reasonable dealings with banks, but I will concur with the 1985 SBA study which concluded that women may not be treated equally in access to capital funds.

As it stands now, Government is telling the minority and women business community that legislation is working to open up area's of procurement hitherto unavailable to them. What Government must also address is - if legislation exits to allow us to be on equal footing in the bid process, then companion legislation must address the problem of government paying it's bills. Without prompt pay and equal access to credit, government is throwing drowning minorities and women owned businesses a leaden life preserver.

One specific reason for today's hearing - the problems of which minority and women owned businesses encounter by including them in the one-goal approach developed by DOT. We are all struggling companies fighting for a small piece of the pie. By lumping us together, there is created a larger pool of companies for a smaller piece of pie. I have taken the liberty of including a study of my construction company done under the auspices of the University of Chicago Business School (see Appendix A). It clearly shows that, had there not been a WBE program, my company would have had no DOT contracts in the early years. As my company grew, so did the contracting opportunities provided under separate goals. In 1987 when the extremely large DOT contracts for the Dan Ryan Expressway were announced, ($120,000,000.00), with 15% to be awarded to DBE's, I hoped for a portion of that $18,000,000.00 DBE goal. Out of the six quotes on work which Castle submitted, two were accepted and Castle was awarded a $1,733,000.00 contract. While I was pleased to get the work, and we completed our work ahead of schedule, I still am concerned about pooling all DBE's against each other when we are all struggling to survive and grow. I, personally, am strongly in support of separate goals and strongly support strong certification and separate goals for Federal agencies.

The WBE/DBE programs can work well with (1) proper certification, (2) aggressive pre-award monitoring and post-award compliance monitoring, (3) adequate and equal access to commercial credit and bonding. If Congress can help legitimate minority and women owned businesses to mainstream, the United States will finally be using its greatest untapped strengths.

Ladies & Gentlemen, thank you for all you've done in the past, thank you for the opportunity to present testimony, and thank you for your help in the future and especially thank you for your support of HR 5050.

University of Chicago

Graduate School of Business
1101 East 58th Street, Chicago, Illinois 60637

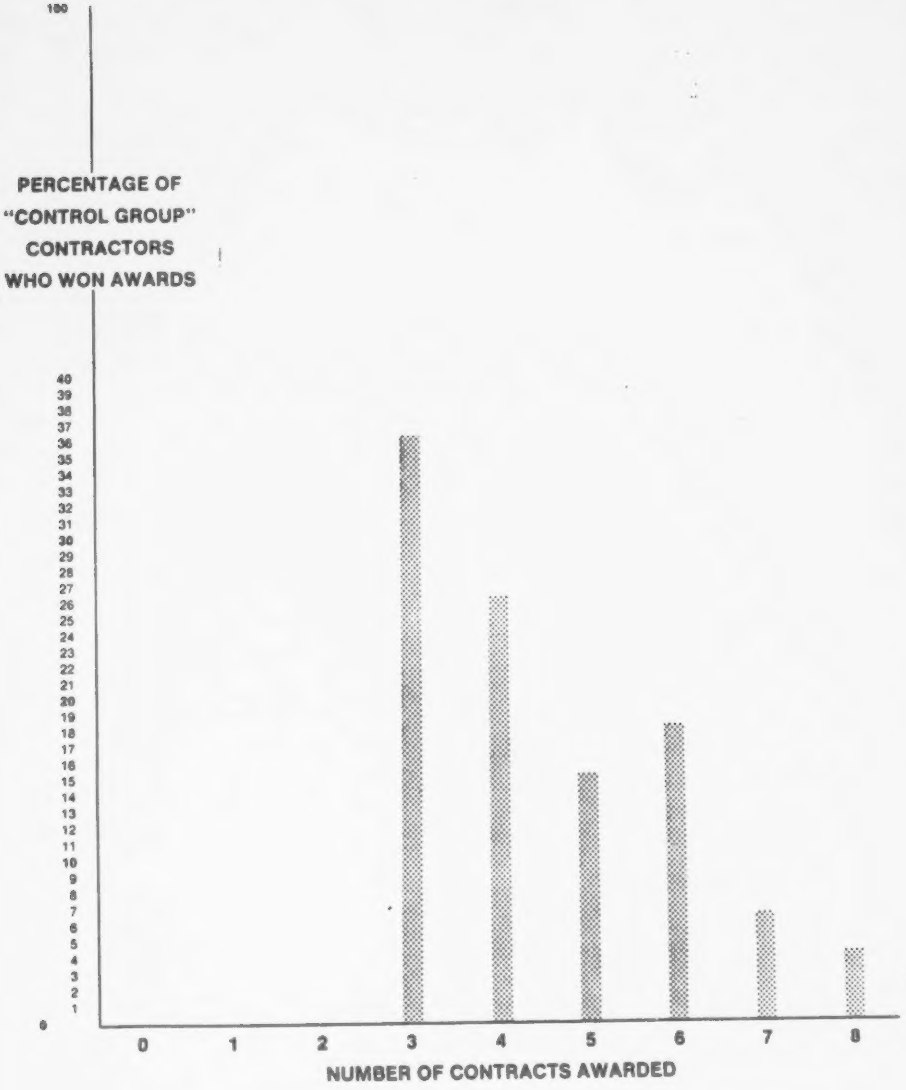
October 17, 1984

Comment on the

Castle Construction Corporation Economic Disadvantage Report

In my professional opinion, the "Economic Disadvantage Report" strongly suggests that as a result of being a women business enterprise (WBE), the Castle Construction Corporation (CCC) has suffered a competitive disadvantage in obtaining Illinois Department of Transportation (IDOT) bids. The analysis is based on the fundamental statistical method of comparison; the underlying idea is to compare the performance of CCC with that of a non-WBE counterpart which is otherwise identical. Although such a perfectly matched counterpart does not exist, the report approximates the ideal comparison by comparing CCC with a "control group" of non-WBE companies which are closely matched to CCC based on all available information. The sample information is persuasive evidence that every single company in the "control group" obtained many more IDOT contracts than CCC. The WBE nature of CCC is the only identifiable systematic difference available to explain the observed competitive disadvantage.

Edward Ian George
Edward Ian George
Assistant Professor of Statistics



The average number of contracts awarded to each control group member was 4.38

STATISTICAL STUDY

Methods and Procedures

Purpose of our study was to determine the percentage of contractors who have been awarded contracts by the IDOT,or by General Contractors who has contracted with the IDOT.

A. Establishing a Control Group

To establish a list of economically similar competitors, the following steps were taken.

1. A list of all prequalified contractors was obtained from the State of Illinois Department of Transportation, Bureau of Construction. This list included the names of 1200 contractors, showing the types of major construction that each was qualified to perform.

2. From this list of 1200, we determined our control group by using the following process:

   a) We eliminated all contractors whose phone number was not within the (312) area code. We justified this action by determining that most contractors perform the majority of their business within a given radius of their office location. This also allowed the researcher to work with smaller numbers, while not sacrificing the dependability of the sample.

b) We eliminated all Disadvantaged Business Enterprises (DBEs) and Woman Business Enterprises (WBEs) on the basis that they were not part of the reference group against whom we wished to prove our disadvantage. Also, our preliminary investigation indicated that all WBEs were also at a competitive disadvantage.

c) We eliminated all contractors who were not qualified in at least one of the following major construction areas:

1) Excavating and grading
2) Surfaces bases
3) Highway structures
4) Miscellaneous concrete construction

We concentrated our study on contractors who performed in these areas since Castle is prequalified in all of these areas. It should also be noted the majority of firms are prequalifed in at least one of these areas, therefore, this population would be representative of our direct competition in the bidding process.

d) We eliminated all large General Contractors who have characteristically submitted bids for more than $250,000. These contractors were not deemed to be our competitors, since Castle is prequalified to a maximum of $250,000 per bid.

B. The Study

1) A sample of over 200 contracts was gleaned from the records at the IDOT District One office in Schaumburg, Illinois. Randomness was obtained by rolling a die to determine which contracts were to be selected for the sample, all of which were selected without regard to DBE or WBE status.

The sample was taken from a ten-volume index of all contracts in District One. The researcher began with the most recent volume and worked in reverse chronological order picking samples until 200 contracts were recorded. This process brought the sampling back to March, 1981.

2) Each contract selected for the sample was recorded by letting date, contract number, and the names of all the

participating contractors.

3) In the next step of the analysis, the researcher cross-referenced all members of the control group (derived earlier from the list of prequalified contractors) with the contractors who were awarded work in any of the sample contracts. From each sample, only those contractors who performed as subcontractors or as general contractors on awards of less than $250,000 were used. The results of this cross-reference gave us the distribution of awards to each contractor.

4) Upon analyzing the data obtained thus far from this study, it was apparent that a significant percentage of the control group did not receive any awards. Ninety-one out of the 180 contractors in the control group did not receive any bids.

It also became apparent that of the remaining 89 contractors who did receive awards, not one of them received fewer than three. The distribution of awards was as follows: 36% received three awards, 26% received four awards, 15% received 5 awards, 13% received six awards, 6.5% received 7 awards and 4.2% received eight or more awards.

5) In order to determine why the 91 contractors from our

control group had not received any of the awards, we began placing phone calls to speak with them directly. For each call, the researcher identified himself by name and as an employee of Castle Construction Corporation of Chicago. The researcher then asked to speak to the estimator or the appropriate party regarding IDOT bids. At this point, many respondents indicated they did not directly, nor indirectly work for the IDOT. Generally, they informed us that were prequalified because it was required or desirable in bidding for work in the private sector or for municipalities.

If my call was subsequently transferred to a more knowledgeable party prior to receiving a definite answer, I again identified myself and asked if the contractor regularly submitted bids to the IDOT or to general contractors who had received awards by the IDOT. To further qualify this, I then asked each contractor if they had bid for contracts more than twenty times in the past three years. None of these contractors who were called were large contractors, (those who regularly bid on contracts more than $250,000) since all large contractors were accounted for as having received awards in our sample.

C. The Results

1. The distribution of contracts awarded to members of the control group was as follows:
    - 36% received three awards
    - 26% received four awards
    - 15% received five awards
    - 18% received six awards
    - 6.5% received seven awards
    - 4.2% received eight or more awards

D. The Conclusion

The results of this statistical study clearly indicate that the control group received a substantial amount of IDOT contracts, while Castle received none. Since the WBE status of Castle was the only identifiable systematic difference available to explain this disparity, it would seem that Castle is suffering from the disadvantage of being a woman-owned business, or a WBE.

What is important to note is that even if a portion of the control group were eliminated, say, for instance, if they were found not to be similarly matched to Castle, the results of the study would still be accurate since all members of the control group had been awarded contracts. For this reason, we can have a high degree of confidence in our statistical comparison.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois/62764

October 5, 1984

Castle Construction Corporation
10340 S. Western Ave.
Chicago, Illinois 60643

To Whom It May Concern:

The Department has reviewed your request to inspect:

> "Certificate of Eligibility of contractors in district one with a financial prequalification rating of approximately $250,000."

The request is denied under Section 7(g) of the Freedom of Information Act which exempts from inspection and copying "trade secrets and commercial information obtained from a person or business where such trade secrets or information are proprietary, privileged or confidential, or where disclosure of such trade secrets or information may cause competitive harm."

The request is also denied under Section 3(f) of the Freedom of Information Act because compliance would be unduly burdensome for the Department and the burden on the Department outweighs the public interest in the information. The reason why it would be unduly burdensome and the extent to which compliance will so burden the operations of the Department are as follows:

> Certificates of Eligibility are filed separately in approximately 1300 contractor files. These files are maintained for contractors statewide in alphabetical order. In order to satisfy the request it would be necessary to manually search each of approximately 1300 files; determine whether the contractor is in District One and whether the contractor is prequalified for "approximately" $250,000; remove certificates for pertinent contractors for inspection by requestor; and then refile the certificates after inspection. Requestor cannot be allowed access to the files because they contain other information exempt from disclosure under the Freedom of Information Act.

If you wish, you may contact John Burke at 217/782-6953 to discuss your request in order to modify it so that it does not seek information exempt under Section 7(g) and so that compliance would not be unduly burdensome on the Department.

This denial may be appealed to the Secretary of the Illinois Department of Transportation. An appeal shall be sent to:

Secretary
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, Illinois 62764

Very truly yours,

E J Kehl

E. J. Kehl
Engineer of Construction

3077L

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directions metropolitan inc.

August 8, 1988

The Honorable Ike Skelton
Chairman - Subcommittee on Procurement
Innovation and Minority Enterprise Development
Committee on Small Business
U.S. House of Representatives

To The Honorable Members of The Subcommittee on Procurement Innovation and Minority Enterprise Development:

As the president of a 100% minority female owned construction firm located in Chicago, Illinois, I wish to submit the enclosed comments in support of the increase in federally mandated set asides and the reinstitution of a two goal system in the counting of DBE and WBE participation in the minority business program.

The views set forth in this testimony are supported by the Federation of Women in Construction, and the Alliance of Minority and Women Association.

Respectfully Submitted,

Directions Metropolitan, Inc.

J.L. Bradley
President

JLB/kt

Enclosures

2501 WEST POLK STREET, CHICAGO, ILLINOIS 60612 (312) 633-2760

The Issue

Should federally mandated set asides be increased?

Contracts set aside by federal mandate is essential to the overall success of the disadvantaged business program. It stands as an innovative way to help DBE/WBE compete for highway work. Relative to the development of disadvantaged firms a set aside program provides the mechanism to alleviate other problems which stipend the growth of these firms. For example, as the prime contractor the disadvantage firm has more control over its cash flow, better able to ascertain when payments are to be received and also in a position to utilize all payment benefits (i.e. billing for stored materials, etc.).

Being the prime contractor also facilitates the ability to secure loan proceeds to do the work because the contract is directly with the government agency. The Set Aside program also would allow the agencies more direct opportunity to assist the DBE/WBE in their developmental process. It is the best way to ensure the success of the program.

The present percentage of dollars set aside is minute at best. States have been reluctant to use the set aside program in past years and we believe this contributes to the length of time it takes to mainstream DBE/WBE firms. The ultimate effect of a set aside program is to develop DBE/WBE Primes which will utilize DBE/WBE subcontractors. This maximizes the impact of the disadvantage business legislation.

The Issue

What effect would a two goal system have on existing law concerning small disadvantaged businesses?

The two goal system serves to increase the total participation of socially and economically disadvantaged groups in national transportation projects. Maintenance of separate overall and contract goals for Women Business Enterprise (WBE's) reemphasizes the WBE programs and mandates specific attention and resources be devoted to ensure the success of these programs.

To "lump" WBE and DBE together in one category with one goal will prove detrimental to WBE's in the long run. Available statistics since the enactment of the single goal may seem to indicate WBE's are benefiting from the change, however we believe the long term effect of the single goal will serve to reduce the impact of the law on small disadvantage businesses as it relates to women business enterprises.

The single goal has already had a negative effect on the participation of minority and women business enterprises. It has

1. resulted in an actual decrease in the goal for participation by disadvantaged firms. Under the two goal system the DBE goal of 10% and the WBE goal of 2% served to provide a 12% total goal participation. The single goal of 10% has cost us 2% of our potential participation.

2. reduced the number of socially and economically disadvantaged firms participating in the program. We believe a review of the firms receiving the contracts as DBE's since the enactment of the single goal will show the actual number of firms has decreased and that fewer firms are participating than before. This is ultimately destructive to the disadvantaged business program and minimizes the effect of the legislation.

3. reduced the participation of female owned firms, which are not male dominated. We note with great concern the group of women who support the single goal seem to represent firms with strong male domination because of marriage or family relation. In the purest these firms may not suffer from the most blatent discrimination served by women business owners seeking to participate on transportation projects, that of sexual discrimination. and

4. created on unhealthy competition between minorities and women. It goes without saying that a congressional mandate is needed to ensure participation of DBW/WBE's in highway construction spending. The dramatic increase in the percentage of dollars spent with DBE firms since the enactment of Section 105(f) is plain to see that the 10% goal is perceived as a ceiling of participation by the industry and not as a floor as prescribed in the legislation. The fact of the matter is that opportunity is now limited to 10% participation and women now must compete against male DBE's to achieve any participation. This is not helpful to the continued growth of women owned businesses.

Characteristics of the construction industry present an atmosphere which is not conducive to full participation by women businesses. It is a male dominated industry which systematically excludes women from not only contracting opportunities, but also from employment opportunities. The needs of women are unique and specific as it relates to our participation in transportation contracts.

Singlizing the goal is the first step to eliminating the WBE program. To group women in with DBE's is to fail to address the specific needs and challenges we face as women business owners. We need the mandate to specifically require contracting opportunities for women. In addition a goal should be established which recognizes the number of available WBE's capable of participating in the program.

WOMEN
CONSTRUCTION OWNERS
& EXECUTIVES, USA

TESTIMONY BEFORE CONGRESSIONAL REPRESENTATIVES

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON PROCUREMENT

Submitted By:

Women Construction Owners and Executives, USA

Marjorie L. Herter, National President

Women Construction Owners and Executives, USA is a national association representing women owners and decision making executives in the construction industry. The Association was formed for the purpose of creating a network to promote business opportunities for women and the role of Women Business Enterprises in the construction industry. As Women Construction Owners and Executives has members in twenty-four states, we represent a fair cross section of women business owners and executives in the industry. Women Construction Owners and Executives, USA appreciates the opportunity to testify before this Committee. The issue of WBE/MBE government procurement opportunities has taken a back seat for far too long. We commend Chairman Skelton, Congressman Hayes and other members of the Committee for addressing a complex and controversial topic.

Recognizing that women in the construction industry are a distinct minority, Women Construction Owners and Executives, USA supports separate procurement goals for women and minorities.

Procurement goals for surface transportation were combined last year under the Surface Transportation Uniform Relocation Assistance Act (STURAA) to make women presumptively disadvantaged and combine them with minorities into a 10% Disadvantaged

Business Enterprise (DBE) goal. Recent legislation has also combined goals for airport construction. This legislation has had both a positive and negative effect to women in the construction industry. First, it has allowed women opportunities to bid on projects and to have access to other programs, i.e. short term lending and bonding programs as well as other programs and technical assistance available to the "disadvantaged". So the classification of women as disadvantaged has been of assistance to women contractors.

On the other hand, the combined goals has led to severe in fighting between the minorities and women for 10% of contracting opportunities. Prior to the Surface Transportation Act, minorities were given a 10% participation goal and women had an administratively set 3.2% goal. The combined goals have led to massive minority participation (to the exclusion of women) in some areas and has had the opposite effect in other areas. In California, the combined goals have had a detrimental effect on women contractors. On the other hand, women have gained a lion's share of the goal in the Chicago area. The only solution to this dilemma, is to provide for separate goals. There is currently some discussion of a return to the 10% minimum goal for minorities and establishing a 3.5% for women. Although Women Construction Owners & Executives support the two goal system, we consider the 3.5% goal unacceptable. There are women contractors who could easily take the entire 10% from a minority contractor and to restrict them to a lower 3.5% goal would lead general contractors to seek a smaller women's participation on projects than they have in the past. By the same token, many contractors will dismiss the women's goal as a "mere 3%" and not truly attempt to outreach to women contractors. Therefore, Women Construction Owners & Executives will support separate goals so long as the goal for women is not less than 5%. Naturally, the Association would support an equal goal of 10% for women and 10% for minorities. However, we believe that a minimum participation goal for women of 5% is a fair assessment of the market place at the present time.

The certification process for verifying WBE and MBE status needs to be simplified and uniform while still providing protection from "fronts".

Women Construction Owners and Executives vehemently opposes both WBE and DBE fronts. WCOE defines a WBE "front" as a business which is essentially controlled by a man either directly or indirectly. When a woman is not making the day to day business decisions which affect her company and allows an outside source to make those decisions, this becomes a front. WCOE does not object to the woman with limited business experience attempting to establish her own business. She may seek the assistance of male field superintendents for expertise in various crafts. However, so long as she is the driving force behind the business and is the one who makes the business and financial decisions of the company, she is a legitimate WBE.

Unfortunately too many businesses are becoming fronts because of the opportunities for WBEs to bid on large projects. WCOE seeks an enforcement mechanism and procedure to eliminate fronts and penalize those individuals who have established fronts. The Department of Transportation has established a toll free number where callers can anonymously report fronts. The Department of Transportation should be commended for this action. However, the follow-up on these reports still remains to be seen.

In addition, WCOE seeks a penalty for those contractors that set up and encourage fronts. WCOE would support legislation that would effectively ban a contractor from bidding any public works project for three years if he were found to have established or be the moving force behind a WBE front.

The purpose of a WBE program is to provide opportunities for women contractors to gain experience and place themselves in the mainstream. By allowing fronts to exist, thereby taking these contracts away from legitimate WBEs, the entire purpose of the WBE program is defeated. Secondly, fronts negatively impact upon legitimate WBE businesses. Contractors are often hesitant to work with WBEs and the increase in fronts seriously damages the legitimate WBE's credibility.

In addition to the "fronts" issue, is the issue of certification itself. Under the current sets of regulations, the Department of Transportation has over 1,000 different divisions which require certification. Women Construction Owners & Executives seeks a uniform certification procedure with the Department of Transportation. Once the WBE or MBE is certified with the Department of Transportation that certification should be honored for any project or division of the U.S. Department of Transportation.

The Department of Transportation must be commended for its basically thorough, although repetitive, certification process. Other agencies such as the Department of Defense and Department of Housing and Urban Development provide for a one page "self-certifying" process. This type of self-certifying process encourages the establishment of fronts and hurts the legitimate WBE contractor. Women Construction Owners and Executives would ultimately like to see one centralized certification procedure for all federal agencies. And, once a contractor was certified with one federal agencies she would be certified as a WBE with all other agencies. On the other hand, if a WBE was decertified, the WBE would be decertified with all federal agencies. Currently, a WBE can be decertified with one agency or even division of the Department of Transportation only to continue working as a legitimate WBE with another division.

Finally, WCOE would like to suggest certain criteria be established to assist the agencies in WBE/MBE certification. Currently the criteria for certification is that the WBE or MBE have a 51% ownership interest in the business and have "substantial day to day control over business operations". This criteria is so broad that it leaves far too much interpretation in the hands of a local division or office. This leads to conflicting standards to the detriment of women contractors. In several states where community property laws apply, legitimate WBE have been denied certification on the basis that community property laws give the husband a 50% interest in the business, therefore the woman cannot be a 51% owner. In other instances where the woman is not the license holder, certification has been denied. Therefore, WCOE suggests a uniform criteria and documentation list for WBE/MBE certification.

Criteria for certification:

1. Women or minority ownership of 60% of company

2. Woman or minority must have substantial control of management and daily business operations

3. Woman or minority must either be:
    a. the license qualifier,or
    b. have 3 years work experience in the specific trade or business, or
    c. have a degree from a college or university in a field directly relating to the business or business management, or
    d. inherited business from a relative

4. Community property laws shall not effect the qualification of a MBE/WBE relating to initial capital investment or periodic loans to the company.

5. If the woman's or minority's spouse is employed by the business, the qualifying woman or minority must exercise sufficient control to:

a. exercise decision making authority over said spouse and all subordinates, including the actual right to terminate said spouse, and

b. continue to operate the business without spouse's participation, and

c. The spouse will not have any ownership interest in the company. (A spouse may have an ownership interest in the company so long as he does not perform work for the company.)

6. The woman or minority shall exercise a controlling voting interest on the company's Board of Directors. If voting power is exercised by a quorum of the Board of Directors and not based on voting percentage, then, a majority of the members of the Board of Directors must be women or minority, respectively.

Certification and review process shall include the following items:

1. On site review of business to determine if the woman or minority has sufficient knowledge of the workings of the business and day to day management and control.

2. The woman or minority must have and exercise the following authority:

a. to sign checks
b. to enter into contracts
c. to reject contracts
d. hire and fire personnel

e. periodic direct supervision of construction projects or field work

. The Company will provide the State with the following plicable documentation:

a. proof of U.S. citizenship or lawfully admitted permanent residency for each female or minority owner or shareholder.
b. Proof of sex and/or ethnicity of each female or minority owner or shareholder.
c. Federal tax returns for business for past three years.
d. Applicable license(s) and/or permit(s)
e. Article of Incorporation, including date approved by the State.
f. Corporate by-laws
g. Partnership Agreement
h. Minutes of the following meetings
    - Organizational meetings
    - Shareholder meetings for the past thirty-six months.
    - Board of Directors meetings for the past thirty-six months.
i. Copies of stock certificates issued (original).
j. Stock transfer ledger.
k. Proof of stock purchase.
l. Resumes of principals and key management personnel showing education, training and employment with dates.
m. Copies of third party agreements such as rental or management service agreements, etc.
n. Furnish copies of agreements relating to:
    - stock options
    - stockholder voting rights
    - ownership agreements
    - ownership of voting securities
    - stockholder agreements

- facts pertaining to the value of shares
- restrictions on the disposal stock loan agreements

o. Vehicle registration for all company owned vehicles

p. If the company was recently purchased, a copy of any purchase agreement including copies of cancelled checks.

Construction shall be defined the purposes of this section as:

a. A construction company in good standing and licensed by the state in which it generally conducts business.

b. A supplier of construction related materials if 1) the supplier is the licensed distributor or franchisee of the specific product being supplied and 2) warehouses or stores an inventory or 3) is a retail outlet as well as a wholesale supplier and warehouses or stores an inventory as a normal and regular or 4) if the supplier actually manufactures the materials sold.

c. Licensed engineering and architectural firms.

Although this list may appear overly burdensome, several of our members have stated that if a procedure were established whereby they only needed to submit this information one time to one agency, it would still substantially streamline the certification procedure. Currently, WBE contractors must produce this information and more before being certified with various division and agencies. It is tragic to think that a program established to assist women and minority contractors has in fact hampered that progress through vague regulations, inconsistent policy and a barrage of paperwork.

Finally, bonding is always difficult to obtain for small contractors, but is particularly so for women and minorities. Discrimination against women and minorities in the bonding markets is quite prevalent. In the past, the Department of Transportation has provided special bonding programs for subcontractors on major freeway and highway projects. This type of bonding program needs to be available to all WBE/MBEs on government projects. Without an established "track record" women and minority contractors cannot get bonding in the private sector. The establishment of a bonding program at a reduced cost to minority and women contractors will help establish that track record and more quickly assimilate women and minority contractors into the private sector. After all, assimilating women and minority contractors into the mainstream of the construction industry is the ultimate goal of special procurement programs.

Again, Women Construction Owners and Executives, USA appreciates the opportunity to testify before this Committee and hopes that our comments are of assistance to you. Please do not hesitate to call upon us again in the future if we can be of assistance to you.

Testimony given by:
Marjorie L. Herter, President
Vee See Construction Co., Inc.
4100 W. 105th Street
Oak Lawn, IL 60453
(312) 425-3420
Ms. Herter is the national president of
Women Construction Owners & Executives, USA

TESTIMONY OF JAMES R. CARROLL
DIRECTOR OF GOVERNMENT REPRESENTATION
ILLINOIS ATTORNEY GENERAL'S OFFICE

August 8, 1988

BEFORE U. S. HOUSE SUBCOMMITTEE ON PROCUREMENT, INNOVATION AND MINORITY ENTERPRISE

Good morning Mr. Chairman and members of the committee. On behalf of Attorney General Neil F. Hartigan, I want to thank you for the opportunity to address this committee today.

My name is James Carroll and I am the Director of Government Representation for the office of the Illinois Attorney General. Some months ago, when the awarding of contracts for the reconstruction of the Dan Ryan came into question, Attorney General Hartigan asked that I direct an investigation into the Dan Ryan project, concentrating in the area of contracts awarded to Disadvantaged Business Enterprises (DBE's), including both women and minority companies. As you can well imagine, the scope of such a wide-ranging investigation is time consuming and will necessarily continue for months to come.

However, since that time, I can report to you that a team of attorneys and investigators from our office have inspected files containing literally upwards of a hundred thousand documents maintained by the Illinois Department of Transportation relative to the Dan Ryan.

In addition, we have met with several minority business association representatives in an attempt to develop concrete information concerning evidence of illegal activity of any sham or front DBE's who are acting as subcontractors on the Dan Ryan Project. Today, I would like to renew that request for anyone with further concrete information relative to illegal activity by any Disadvantaged Business Enterprise to please contact the office of the Illinois Attorney General.

Since we are a law enforcement agency, it would not appropriate to comment on the status of our investigation as it is pending, but I can assure you that we will take appropriate legal action at its conclusion as we did relative to the Mc Cormick Place contracts. I can tell you, however, that from the information we have developed we are now focusing our investigation on a number of DBE's which merit further strict scrutiny.

Our investigation into the Dan Ryan continues at this time and evolve as the results of the information we have developed here, and in other areas currently under investigation, are expanded.

In addition to our Dan Ryan Investigation, as I alluded to above, we recently filed a law suit against a number of majority contractors and DBE's concerning construction of the Mc Cormick Place Annex in Chicago, where we found concrete evidence of sham and front DBE's doing business in Illinois. We are attempting to bar any such company, both majority and minority from doing any further business in Illinois. The investigation into the construction of Mc Cormick Place has now been expanded and further litigation, including civil and possibly criminal prosecution, can be expected.

Since January 1, 1986, when the Illinois legislature passed Public Act 84-194, hundreds of companies have applied for and been denied certification or recertification by the Illinois Department of Transportation. It was only recently that we were requested to render an opinion as to who had the authority to enforce those statutes with reference to IDOT's federal certification procedures. We have now determined that the Attorney General has the authority to enforce, by means of the state criminal statute, the activities of Illinois DBE's certified by IDOT pursuant to state and federal regulations.

The office of Attorney General has the expertise and stands prepared to conduct these investigations if the necessary resources are provided.

Another factor which is pertinent to your inquiry is the case of City of Richmond v. J. A. Croson Company. We have filed an amicus brief in this case which is currently on appeal to the United States Supreme Court from the Fourth Circuit Court of Appeals. In City of Richmond, the Court of Appeals held that before a minority set aside program, which designates a particular percentage of business to be contracted to a DBE can be enforced, there must be a showing of a compelling interest that an agency actively discriminated against minority contractors in the past.

This holding clearly endangers all minority set-aside programs, including Illinois, and Attorney General Hartigan along with other State Attorney Generals has moved to intervene in an attempt to overturn such stringent requirements under which a DBE program can operate. The case is currently set for oral argument in the United States Supreme Court on October 5, 1988.

In any event, the shortcomings of any set aside program can not be cured with a single investigation. It will take the support of the United States Congress and all State Legislatures to provide the resources to actively police these programs in the future. Likewise, is encumbment on the Illinois Department of Transportation to provide the resources for the rigid enforcement of the certification procedures to ensure compliance with all pertinent State and Federal laws and regulations.

The office of the Attorney General stands ready to provide any assistance in achieving everyone's mutual goal of providing a meaningful opportunity for all disadvantaged businesses, both minority and women enterprises, to participate equally in Illinois construction projects.

[illegible] assault or first degree murder, committed [illegible] prior convictions, shall be adjudged an habitual [illegible]

[illegible] prior convictions need not have been for the [illegible] offenses.

[illegible] convictions which result from or are connected [illegible] same transaction, or result from offenses commit[illegible] same time, shall be counted for the purposes of [illegible] as one conviction.

[illegible] Article shall not apply unless each of the follow[illegible] are satisfied:

[illegible] third offense was committed after the effective [illegible] this Act;

[illegible] third offense was committed within 20 years of [illegible] judgment was entered on the first conviction, [illegible], however, that time spent in custody shall not be [illegible]

[illegible] third offense was committed after conviction on [illegible] offense;

[illegible] second offense was committed after conviction [illegible] first offense.

[illegible] Except when the death penalty is imposed, anyone [illegible] an habitual criminal shall be sentenced to life [illegible]ment.

[illegible] by P.A. 84-1450, § 2, eff. July 1, 1987; P.A. [illegible] § 1, eff. Jan. 1, 1988.

[illegible] of P.A. 84-1450, see Historical Note following ch. 37, [illegible]

[illegible] Evidence of prior convictions—Record as prima facie evidence—Waiver of exceptions

[illegible]-2. (a) A prior conviction shall not be alleged in [illegible], and no evidence or other disclosure of such [illegible] shall be presented to the court or the jury [illegible] the trial of an offense set forth in Section 33B-1 [illegible] otherwise permitted by the issues properly raised in [illegible]. After a plea or verdict or finding of guilty and [illegible] sentence is imposed, the prosecutor may file with [illegible] a verified written statement signed by the [illegible] Attorney concerning any former conviction of an [illegible] set forth in Section 33B-1 rendered against the [illegible]. The court shall then cause the defendant to be [illegible] before it; shall inform him of the allegations of [illegible] so filed, and of his right to a hearing before [illegible] on the issue of such former conviction and of his [illegible] counsel at such hearing; and unless the defendant [illegible] such conviction, the court shall hear and determine [illegible], and shall make a written finding thereon. If a [illegible] has previously been imposed, the court may [illegible] sentence and impose a new sentence in accord[illegible] Section 33B-1 of this Act.

[illegible] duly authenticated copy of the record of any [illegible] conviction of an offense set forth in Section [illegible] shall be prima facie evidence of such former convic[illegible] a duly authenticated copy of the record of the [illegible]'s final release or discharge from probation [illegible] or from sentence and parole supervision (if any) [illegible] pursuant to such former conviction, shall be pri[illegible] evidence of such release or discharge.

[illegible] claim that a previous conviction offered by the [illegible] is not a former conviction of an offense set [illegible] Section 33B-1 because of the existence of any [illegible] described in this Act, is waived unless duly [illegible] the hearing on such conviction, or unless the prosecution's proof shows the existence of such exceptions described in this Act.

Added by P.A. 80-1099, § 1, eff. Feb. 1, 1978.

33B-3. Release from imprisonment by pardon—Consideration

§ 33B-3. If the person so convicted shall show to the satisfaction of the court before whom such conviction was had that he was released from imprisonment, upon either of the sentences upon a pardon granted for the reason that he was innocent, such conviction and sentence shall not be considered under Section 33B-1.

Added by P.A. 80-1099, § 1, eff. Feb. 1, 1978.

ARTICLE 33C. DECEPTION RELATING TO CERTIFICATION OF DISADVANTAGED BUSINESS ENTERPRISES

Paragraph

33C-1. Fraudulently obtaining or retaining certification.
33C-2. Willfully making a false statement.
33C-3. Willfully obstructing or impeding an official or employee of any agency in his investigation.
33C-4. Fraudulently obtaining public moneys reserved for disadvantaged business enterprises.
33C-5. Definitions.

Article 33C was added by P.A. 84-192, § 1, eff. January 1, 1986.

33C-1. Fraudulently obtaining or retaining certification

§ 33C-1. Fraudulently obtaining or retaining certification. A person who, in the course of business, fraudulently obtains or retains certification as a minority owned business or female owned business commits a Class 2 felony.

Added by P.A. 84-192, § 1, eff. Jan. 1, 1986.

33C-2. Willfully making a false statement

§ 33C-2. Willfully making a false statement. A person who, in the course of business, willfully makes a false statement whether by affidavit, report or other representation, to an official or employee of a State agency or the Minority and Female Business Enterprise Council for the purpose of influencing the certification or denial of certification of any business entity as a minority owned business or female owned business commits a Class 2 felony.

Added by P.A. 84-192, § 1, eff. Jan. 1, 1986.

33C-3. Willfully obstructing or impeding an official or employee of any agency in his investigation

§ 33C-3. Willfully obstructing or impeding an official or employee of any agency in his investigation. Any person who, in the course of business, willfully obstructs or impedes an official or employee of any State agency or the Minority and Female Business Enterprise Council who is investigating the qualifications of a business entity which has requested certification as a minority owned business or a female owned business commits a Class 2 felony.

Added by P.A. 84-192, § 1, eff. Jan. 1, 1986.

33C-4. Fraudulently obtaining public moneys reserved for disadvantaged business enterprises

§ 33C-4. Fraudulently obtaining public moneys reserved for disadvantaged business enterprises. Any person who, in the course of business, fraudulently obtains public moneys reserved for, or allocated or available to minority owned businesses or female owned businesses commits a Class 2 felony.

Added by P.A. 84-192, § 1, eff. Jan. 1, 1986.

33C-5. Definitions

§ 33C-5. Definitions. As used in this Article, "Minority owned business", "female owned business", "State agency" and "Certification" shall have the meanings ascribed to them in Section 2 of the Minority and Female Business Enterprise Act, approved September 6, 1984, as amended.[1]

Added by P.A. 84-192, § 1, eff. Jan. 1, 1986.

[1] Chapter 127, ¶ 132.602.

ARTICLE 33D. CONTRIBUTING TO THE CRIMINAL DELINQUENCY OF A JUVENILE

33D-1. Contributing to the criminal delinquency of a juvenile.

Article 33D was added by P.A. 85-906, § 1, eff. Nov. 23, 1987.

33D-1. Contributing to the criminal delinquency of a juvenile

33D-1. (a) Contributing to the criminal delinquency of a juvenile. Any person of the age of 21 years and upwards, who with the intent to promote or facilitate the commission of a felony, solicits, compels or directs any person under the age of 17 years in the commission of such felony commits the offense of contributing to the criminal delinquency of a juvenile.

(b) Sentence. Contributing to the criminal delinquency of a juvenile is a felony one grade higher than the offense committed, except when the offense committed is first degree murder or a Class X felony. When the offense committed is first degree murder or a Class X felony, the penalty for contributing to the criminal delinquency of a juvenile is the same as the penalty for first degree murder or a Class X felony, respectively.

Added by P.A. 85-906, § 1, eff. Nov. 23, 1987.

TITLE IV. CONSTRUCTION, EFFECTIVE DATE AND REPEAL

ARTICLE 34. CONSTRUCTION AND EFFECTIVE DATE

Paragraph
34-1. Effect of headings.
34-2. Partial invalidity.
34-3. Savings provisions—Continuation of prior Statutes.
34-4. Effective date.

34-1. Effect of headings

§ 34-1. Effect of Headings. Section, Article and Title headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any Section, Article or Title hereof.

34-2. Partial invalidity

§ 34-2. Partial Invalidity. The invalidity of any provision of this Code shall not affect the validity of the remainder of this Code.

34-3. Savings provisions—Continuation of prior Statutes

§ 34-3. Savings Provisions—Continuation of Prior Statutes. The provisions of Sections 2, 3 and 4 of "An Act to revise the law in relation to the construction of the Statutes", approved March 5, 1874, as amended,[1] shall apply in all constructions of this Code.

[1] Chapter 131, ¶¶ 2, 3 and 4.

34-4. Effective date

§ 34-4. Effective Date. This Code shall take effect January 1, 1962.

ARTICLE 35. REPEAL

35-1. § 35-1. **Repealer.** **[Acts repealed omitted]**

TITLE V. ADDED ARTICLES

ARTICLE 36. SEIZURE AND FORFEITURE OF VESSELS, VEHICLES AND AIRCRAFT

Paragraph
36-1. Seizure.
36-1a. Rights of lienholders and secured parties.
36-2. Action for forfeiture.
36-3. Exceptions to forfeiture.
36-4. Remission by Attorney General.

Article 36 was added by Laws 1965, p. 2868, eff. Aug. 10, 1965.

36-1. Seizure

§ 36-1. Seizure. Any vessel, vehicle or aircraft used with the knowledge and consent of the owner in the commission of, or in the attempt to commit as defined in Section 8-4 of this Code, an offense prohibited by (a) Section 9-1, 10-2, 11-6, 11-15.1, 11-19.1, 11-19.2, 11-20.1, 12-13, 12-14, 18-2, 19-1, 19-2, 19-3, 20-1, 20-2 or 28-1 of this Code, as now or hereafter amended or paragraph (a) of Section 12-15 or paragraphs (a), (c) or (d) of Section 12-16 of this Code, as now or hereafter amended; (b) Section 401, 402, 403, 404, 406(b) or 407 of the "Illinois Controlled Substances Act", approved August 16, 1971, as now or hereafter amended;[1] (c) Section 21, 22, 23, 24 or 26 of the "Cigarette Tax Act", approved June 2, 1941, as now or hereafter amended,[2] if the vessel, vehicle or aircraft contains more than 10 cartons of such cigarettes; (d) Section 28, 29 or 30 of the "Cigarette Use Tax Act", approved July 11, 1951, as now or hereafter amended,[3] if the vessel, vehicle or aircraft contains more than 10 cartons of such cigarettes; (e) paragraph (d) or (e) of Section 4, paragraph (d) or (e) of Section 5 or Section 9 of the "Cannabis Control Act", approved August 16, 1971, as now or hereafter amended;[4] or (f) Section 44 of the "Environmental Protection Act", approved June 29, 1970, as now or hereafter amended;[5] may be seized and delivered forthwith to the sheriff of the county of seizure. Within 15 days after such delivery the sheriff shall give notice of seizure to each person according to the following method: Upon each such person whose right, title or interest is of record in the office of the Secretary of State, the Secretary of Transportation, the Administrator of the

SOLUTIONS TO THE BARRIERS OF MINORITY PARTICIPATION ON THE DAN RYAN AND OTHER NATIONWIDE TRANSPORTATION PROJECTS

Field Hearing

by the

Subcommittee on Procurement, Innovation
and Minority Enterprise
of the
House Small Business Committee

Testimony by

Gregory W. Baise
Secretary
Illinois Department of Transportation

Chicago, Illinois

August 8, 1988

I am glad to have this opportunity to discuss the Disadvantaged Business Enterprise (DBE) program as it relates to transportation projects in Illinois.

Our state is committed to making this program work. One measure of this commitment is the more than $2.7 million a year expended by the state for supportive services, on-the-job training programs and technical support provided by a staff of 31. Nearly $750,000 a year is budgeted for management and technical assistance to DBE firms. This makes Illinois one of the leaders in supporting the goal of expanding opportunities for disadvantaged business enterprises to participate in highway, transit and aviation construction projects.

Last year, Congress enacted a significant change to the DBE program through the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987. Section 106(c) of this act in effect combined what were previously two separate goals for firms owned by minorities and by women into a single 10 percent DBE goal requirement. As a result, different minority groups have felt excluded or underrepresented under individual project contracts. This change was not supported by the Illinois Department of Transportation (IDOT).

The implementation of this change to the federal requirement has been a learning process for all concerned, including the prime contractors. One of the first major projects under the combined 10 percent DBE goal is the Dan Ryan rehabilitation in Chicago. Our experiences with that project in particular have pointed to some serious misconceptions and false expectations for many members of the minority community about the impact of the most recent change in the DBE program.

I understand their frustrations, but neither IDOT nor the Governor can change the law. However, we worked with the Federal Highway Administration in an effort to explore a more flexible interpretation of the new DBE 10 percent goal. In particular, Governor James R. Thompson appealed to U.S. Transportation Secretary James Burnley to allow states the flexibility of choosing two separate goals for women and minorities. The response was a firm no and is attached.

We also asked for an opinion from the Chief Counsel of the Federal Highway Administration with respect to their interpretation of the federal one-goal provision. I have attached that opinion which states ". . . that only one contract goal shall henceforth be established for highway and transit projects using federal funds. . ." The letter further states that women have now been included in the presumptive groups. Therefore, the "unavoidable conclusion is that any preference for one presumptively disadvantaged group to the exclusion of another presumptively disadvantaged group is contrary to the law."

The FHWA has informed us that no project will qualify for federal-aid funds if it includes separate goals for minorities and women. The U.S. Department of Transportation has thus made it clear that we do not have the latitude to distinguish between women and other minorities in the DBE program.

The intent of Congress is further clarified by the Conference Report accompanying the STURAA of 1987. "The Conferees intend that the Department of Transportation and the states no longer should require contractors bidding on federal-aid highway projects to meet separate contract goals for DBEs and WBEs." The report further states that "the Secretary should not increase the overall 10 percent DBE requirement set by this section as a result of the inclusion of WBE's as a presumptive group."

Within these constraints, IDOT has focused its efforts to improve minority participation on the Dan Ryan project. As a result, three more minority owned firms have been added as subcontractors. The combined DBE participation in contracts for the Dan Ryan project is now over 18 percent. Of that share, nearly 45 percent is by minority-owned firms and 55 percent by women-owned firms.

Through its supportive services, IDOT is stepping up efforts to make DBE certified subcontractors more aware of projects coming up for bids. For the Chicago area, this involves holding meetings with community groups whose network includes potential subcontractors, utilizing minority media services and increasing subcontractor awareness of potential IDOT contracts. Well before construction on the Dan Ryan project started last spring, we began meeting with community groups in Chicago to address some of their concerns. This dialogue will continue.

We feel that the Department has done a good job of making sure that minority-owned and women-owned businesses are legitimate. Additional staff members are assigned to review these firms and to assure that they are properly certified. As an example, from 1985 to the present, we certified 380 new firms. During that same period, we recertified 689 firms and denied certification to 442 new firms. Just as important, we denied certification to 257 firms who had previously been in the program. And in a number of cases, applications and information about these firms has been referred to the Illinois Attorney General and Office of Inspector General of the U.S. Department of Transportation for action.

I earlier mentioned my concern over the expectations about the DBE program. One of the major problems is that there are so many, as well as, conflicting expectations within the DBE community itself. Some DBEs want large jobs. Others want projects broken down into numerous smaller jobs. The type of project -- whether it is concrete, asphalt, intersection or bridge work also limits who can bid. Individual contractors are not equipped to take on all types of projects. A firm that is currently limited to concrete type work, cannot undertake asphalt or certain bridge projects. Finally, not all construction opportunities are distributed throughout the state in the same proportion as the location of DBE firms. The majority of DBE firms historically do not bid on projects outside of their immediate geographic area. The problems are similar for the work force.

These difficulties create a problem for IDOT in developing jobs for letting that satisfy the need to repair and maintain our road network, as well as meeting the expectations of DBE firms. Achieving the transportation objectives on one hand while reducing barriers for minorities is indeed a difficult challenge. Within that context, we must get a construction project done to specified standards within a limited time period and cost. Yet, these constraints are often perceived as a bar to participation by minorities and women. While the goal of greater DBE participation is profound in its simplicity and value, the issues in the implementation are complex.

This concludes my testimony. I want to reiterate to the Chairman of the Subcommittee and the other members that IDOT takes its responsibility to implement the DBE program seriously. By working together, we can meet our multiple goals. Thank you for holding this hearing.

STATE OF ILLINOIS
OFFICE OF THE GOVERNOR
SPRINGFIELD 62706

JAMES R. THOMPSON
GOVERNOR

March 9, 1988

Honorable James H. Burnley, IV
Secretary of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Secretary Burnley:

Thank you for the opportunity on February 29th to discuss transportation issues and their importance to Illinois. I appreciate your willingness to be responsive to our transportation needs.

As we discussed, the changes made by Congress in the Disadvantaged Business Enterprise (DBE) program have resulted in a reduced level of minority contracts sublet to firms for the Dan Ryan Expressway rehabilitation. The effect of this legislation has been to reduce minority participation in one of the largest public works projects in Chicago. Your review of this law to determine if separate goals for women and minorities can be established under the law or whether you have any discretionary authority to permit states to establish separate goals will be greatly appreciated.

I am also very interested in your comments on a return of various highway program responsibilities to the states. I will ask the Illinois Department of Transportation to examine the appropriate federal and state roles in building and maintaining highways. I agree that this is one option that should be fully explored as work begins on development of the post-Interstate highway program.

Again, it was a pleasure to meet with you. If I can ever be of assistance, please feel free to give me a call.

Sincerely,

James R. Thompson
GOVERNOR

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 4, 1988

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REC'D-DOT
APR 07 1988
OFFICE OF THE GOVERNOR

The Honorable James R. Thompson
Governor of Illinois
Springfield, Illinois 62706

Dear Jim:

Thank you for your letter following up on our recent discussion of transportation issues in Illinois. You asked me to review Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987 to see if it would permit separate goals for disadvantaged business enterprises (DBE's) operated by minorities and women.

Based on our review of Section 106(c), we have concluded that it permits only a single DBE goal, not separate goals for firms owned and operated by ethnic minorities or women. The law was clear in stating that ". . . women shall be presumed to be socially and economically disadvantaged individuals for purposes of this section." The Conference Report on the 1987 STURAA provided further guidance by citing the conferees' intention that the Department of Transportation and the States ". . . no longer should require contractors bidding on Federal-aid highway projects to meet separate contract goals for DBEs . . . and WBEs."

In view of the language of the law and the Conference Report, the Federal Highway Administration (FHWA) requires each Federal-aid project authorization specify only a single DBE contract goal. The FHWA cannot approve projects with separate goals for ethnic minorities and women.

Because of the questions raised about this issue as a result of the Dan Ryan Expressway reconstruction project in Chicago, the Illinois Department of Transportation (IDOT) recently asked the FHWA if Section 106(c) precludes a preference for one category of DBE over another. The FHWA's Chief Counsel, Mr. Anthony J. McMahon, responded on February 23 that any preference for one presumptively disadvantaged group to the exclusion of another would be contrary to law and Federal regulations. He added that such preference ". . . may not be made applicable to Federal-aid highway projects."

You also mentioned that you have asked the IDOT to examine the appropriate Federal and State roles in building and maintaining highways. As you know, I strongly favor greater State responsibility for the highway program. We are studying a variety of approaches, as are the States, for meeting the needs of the post-Interstate era. I am pleased to know of your interest in this issue.

RECEIVED
APR 11 2 47 PM '88
OFFICE OF THE SECRETARY OF TRANSPORTATION

Sincerely,

Jim

Jim Burnley

U.S. Department
of Transportation
Federal Highway
Administration

400 Seventh St., S.W.
Washington, D.C. 20590

HCC-50.2

Georgianne Riley, Esquire
Deputy Chief Counsel
Illinois Department
  of Transportation
18209 Dixie Highway
Homewood, Illinois 60430-2294

Dear Ms. Riley:

This responds to your inquiry concerning the Disadvantaged Business Enterprise (DBE) Program as authorized in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987 (Pub. L. 100-17, April 2, 1987), and regulations promulgated pursuant thereto (49 C.F.R. Part 23, as amended October 21, 1987, 52 FR 39225). Specifically, you wish to know whether the single goal requirement precludes a preference for one category of DBE over another. The answer is that it does.

The term "DBE" encompasses business entities owned and controlled by individuals who are members of groups presumed to have suffered discrimination in the past. These groups are identified on the basis of race, sex and national origin. Preferences or selections based on these factors are generally proscribed by the United States Constitution and Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000-d). Congress, however, has found a compelling governmental interest in providing a means to remedy the effects of past discrimination in the construction industry through the DBE Program. Therefore, Congress has created an exception to otherwise unconstitutional and illegal race- and gender-based discrimination, which has passed constitutional muster according to the criteria laid down by the United States Supreme Court.

Congress has not distinguished between the categories of presumptive groups comprising the preferred class of disadvantaged business enterprises. Therefore, in administering the legislatively mandated program, the Department of Transportation and the Federal Highway Administration (FHWA) are precluded from recognizing any subpreferences within the preferred class. This basic principle of equality within the class was recently enunciated with respect to the recent addition of women to the presumptive groups. Upon enactment of the STURAA, we immediately acknowledged the legislative requirement of a single goal, which is consistent with our prohibition of separate goals among the several categories of minorities. We advised that as of the beginning of FY 1988, only one contract goal for DBE participation would be permitted on each Federal-aid highway project. We believe this is consistent with the legislative history of Section 106(c):

> . . . the conferees intend that the Department of Transportation and the states no longer should require contractors bidding in Federal-aid highway projects to meet separate goals for DBEs (as defined prior to this Act) and WBEs.

H.R. Rep. No. 100-27, 100th Cong., 1st Sess. (1987).

On October 21, 1987, an Interim Final Rule was issued amending the DBE program regulations at 49 C.F.R. Part 23 to incorporate the legislated changes concerning the inclusion of women in the presumptively disadvantaged class. The discussion in the preamble to the rule and the amendment to Section 23.45(g)(4) make it clear that only one contract goal shall henceforth be established for highway and transit projects using federal funds.

The preamble notes as follows:

> The legislative history of section 106(c) indicates that Congress intended the Department to adopt a one-goal system for DBEs under the new legislation.
>
> Consequently, the Department is amending § 23.45(g)(4) to specify that from now on, the DBE program will have only one goal. That is, each recipient's DBE program will have a single overall goal for DBEs, and each contract on which a goal is required will have a single contracting goal for DBEs.

48 FR 39226

The new regulatory provision concerning the single goal is as follows:

> (4) Recipients covered by the disadvantaged business enterprise program requirements of Subpart D of this Part shall establish an overall goal and contract goal for firms owned and controlled by socially and economically disadvantaged individuals. Other recipients shall establish separate overall and contract goals for firms owned and controlled by minorities and firms owned and controlled by women, respectively.

The unavoidable conclusion is that any preference for one presumptively disadvantaged group to the exclusion of another presumptively disadvantaged group would be contrary to law and federal regulations, and therefore may not be made applicable to Federal-aid highway projects. (See 49 C.F.R. § 635.107(e) (1986)). If such preferences are included in Federal-aid contracts, the state highway agency will be found in noncompliance under Section 23.68 of the DBE regulations which would subject them to the remedies available to the FHWA Administrator in 23 C.F.R. § 1.36, which provides:

> If the Administrator determines that a State has violated or failed to comply with the Federal law or the regulations in this part with respect to a project, he may withhold payment to the State of Federal funds on account of such project, withhold approval of further projects in the State, and take such other action that he deems appropriate under the circumstances, until compliance or remedial action has been accomplished by the State to the satisfaction of the Administrator.

I trust this discussion is responsive to your concern. Copies of this letter have been provided to our Region and Division offices in Illinois.

Sincerely yours,

Anthony J. McMahon

Anthony J. McMahon
Chief Counsel

Attachments

U.S. Department of Transportation
Office of the Secretary of Transportation
Office of Inspector General

Memorandum

Subject Final Report on the Administration of DBE/WBE and Supportive Services Programs in Illinois
Report No. R5-FH-8-143

Date June 21, 1988

From Ronald H. Hoogenboom Ronald H. Hoogenboom
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Reply to Attn of JRA-5

To Herbert R. Teets, Regional Administrator
Federal Highway Administration
Homewood, Illinois

This is our final report on the audit of the Illinois Department of Transportation's (IDOT) administration of the Disadvantaged Business Enterprise, Women-owned Business Enterprise (D/WBE), and Supportive Services programs. This review was performed in response to a request from the Chairwoman, Subcommittee on Government Activities and Transportation, Committee on Government Operations, House of Representatives.

Our objectives were to evaluate the adequacy of FHWA's and IDOT's internal controls and procedures for:

(1) certifying firms as eligible D/WBEs, including procedures for withdrawing certification and imposing sanctions against ineligible firms;

(2) monitoring D/WBEs' performance to ensure that they are performing the work for which they have contracted, waiving D/WBE participation requirements, and assessing sanctions against contractors who fail to meet D/WBE goals;

(3) meeting approved D/WBE participation goals and reporting participation to FHWA; and

(4) monitoring assistance provided under supportive services contracts to ensure that funds are efficiently used to provide meaningful training opportunities for minorities, women and disadvantaged businesses.

We concluded that IDOT's controls and procedures over certain aspects of the D/WBE and supportive services programs are effective. Specifically, IDOT has established controls and procedures which are generally adequate to ensure that:

- D/WBE firms found to be ineligible as a result of investigations are eliminated from the program and, where violations of state statutes occur, they will be referred for prosecution by the Illinois Attorney General's office;
- D/WBEs are actually performing the work for which they have contracted;
- monetary sanctions are imposed against prime contractors who do not make a good faith effort to meet established D/WBE participation goals;
- D/WBE accomplishments are accurately reported based on contract commitments submitted by prime contractors; and
- supportive services are effectively provided to D/WBE firms interested in becoming certified.

With the exception of the 1986 WBE participation, Illinois' reported achievements exceeded related goals for each of the years 1984 through 1987. Since states were encouraged, but not required, to meet WBE goals in 1986, this shortfall does not violate any legislative requirement. However, to the extent that the deficiencies in IDOT's certification process, discussed in Finding A, affect the eligibility of firms, IDOT's reported achievements may be overstated.

In addition, FHWA has demonstrated a commitment to ensuring the effectiveness of the D/WBE and Supportive Services programs through its Process Reviews, Evaluation Reviews, and reviews of IDOT certification committee meeting minutes, supportive services quarterly reports, and supportive services contracts.

The review disclosed, however, that IDOT needs to improve its administration of the D/WBE and Supportive Services programs in three areas: (i) certification of eligible D/WBEs (Finding A, page 5), (ii) monitoring of supportive services targeted to disadvantaged individuals (Finding B, page 10), and (iii) documentation of contractors' efforts to meet D/WBE participation goals (Finding C, page 15). As a result of conditions discussed in these findings: (i) 50 percent of the D/WBE firms reviewed were certified without adequate documentation of one or more of the required eligibility factors, (ii) inexperienced minorities and women were not given an adequate opportunity to participate in on-the-job training programs, and (iii) D/WBE firms may not have had an opportunity to submit quotes on Federally funded contracts where prime contractors have not made good faith efforts to obtain D/WBE participation.

While the weaknesses in IDOT's internal controls are considered significant, we do not believe they stem from any material weakness in FHWA's monitoring procedures and controls. Therefore, reporting to the Secretary under the Federal Managers' Financial Integrity Act is not required.

Consistent with a two week extension for providing a reply to our April 15, 1988 draft report, FHWA's response was received on June 2, 1988. This response included comments provided by IDOT. FHWA's comments are summarized following each finding and a copy of the entire response is included as Appendix A to the report. A copy of IDOT's comments is included as Appendix B. We have addressed IDOT's comments in Appendix C. Although FHWA did not agree with some aspects of the reported findings, they generally agreed to implement corrective actions that are consistent with the intent of the audit recommendations. The exception is the second section of Finding B which relates to placement of experienced individuals in training slots.

FHWA's corrective actions in connection with Finding C are considered adequate to fully resolve this issue and no further response is required. We do, however, request that FHWA provide a further response describing specific actions planned or taken to (i) ensure that IDOT's certification decisions are properly documented (Finding A) and (ii) implement proposed corrective actions relating to the first section of Finding B. We also request that FHWA reconsider its response to the second section of Finding B. In addition, we request FHWA to advise us of its timetable for implementation of proposed corrective actions. In accordance with Department of Transportation Order 8000.1B, please provide us written comments on these items no later than 90 days from the date of the final report.

If you or your staff have any questions or need additional information prior to providing your written response, please contact me at (FTS) 353-0104.

Attachment

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cc: Office of Management Systems, HMS-1
GAO Resident Office, GAO-2
Assistant Inspector General for Auditing, JA-1
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Director, Office of Policy and Procedures, JP-10

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I. INTRODUCTION

A. Background

We performed this review in response to a request from the Chairwoman, Subcommittee on Government Activities and Transportation, Committee on Government Operations, House of Representatives. In a letter dated September 15, 1987 Congresswoman Collins requested that the Office of Inspector General conduct an audit of the Illinois Department of Transportation's (IDOT) Disadvantaged Business Enterprise (DBE) program, Women-owned Business Enterprise (WBE) program, and the On-The-Job Supportive Services program. She requested that the review cover fiscal years 1986 and 1987 and focus specifically on IDOT's:

1. Certification procedure, including the decertification of non-qualifying firms and the sanctions, if any, imposed.

2. Contract performance, to determine whether contracts follow normal prime contractor/subcontractor relationships, and whether there is an excessive use of waiving DBE or WBE participation on contracts.

3. Program goal accomplishment, to determine compliance with the Congressional mandate that a specific percentage goal of authorized funds are expended to DBE/WBEs.

4. On-The-Job Supportive Services program, to determine whether funds were used efficiently and economically, and to further assess whether the program's objective of "particularly providing meaningful training opportunities for minorities and women on Federal Highway Projects" is being accomplished.

On March 31, 1980 the Department of Transportation (DOT) established a regulation entitled "Participation of Minority Business Enterprise in Department of Transportation Programs." The regulation, codified as 49 CFR 23, established requirements for recipients of Federal financial assistance. The regulation implements DOT's policy of supporting the fullest possible participation of firms owned and controlled by minorities and women in Department programs, and established the Minority Business Enterprise and Women-owned Business Enterprise programs.

The Surface Transportation Assistance Act of 1982 established the Disadvantaged Business Enterprise program, and required that not less than 10 percent of Federal highway contract dollars nationwide be awarded to small businesses owned and controlled by socially and economically disadvantaged individuals. Annual percentage goals are also established by each state, as required by

49 CFR, Part 23.45. The DBE program replaced the predecessor Minority Business Enterprise (MBE) program, under which minority participation had been encouraged but not measured against specific participation goals. The WBE program was continued under the Surface Transportation Assistance Act.

The Supportive Services program for on-the-job training to disadvantaged individuals is described by 23 CFR, Part 230, Subpart A. Under this program, supportive services are provided to disadvantaged individuals in order to enhance the effectiveness of on-the-job training programs under Federal-aid highway construction projects. The Supportive Services program for disadvantaged and women-owned business enterprises is described in 23 CFR, Part 230, Subpart B. Under this program, training and assistance is provided to the owners of disadvantaged and women-owned business enterprises so that they can effectively compete with other companies for Federally funded contracts and subcontracts.

The Illinois Department of Transportation (IDOT) is responsible for ensuring that DBE participation meets the annual goal approved by FHWA, and is further responsible for ensuring that WBEs are given every opportunity to participate on Federal-aid highway construction contracts. Until 1985, IDOT administered the predecessor MBE program and the D/WBE programs through its Bureau of Construction. At that time, IDOT established the Bureau of Small Business Enterprise (SBE) which assumed responsibility for the D/WBE programs. In managing these programs, the SBE strives to ensure that D/WBEs are provided the maximum opportunity to participate in Federal-aid construction contracts.

According to IDOT records, actual D/WBE participation has exceeded D/WBE goals in each of the fiscal years 1984 through 1987, except for fiscal year 1986 when WBE participation fell short of the approved goal. Achieved participation, as well as participation goals, disclosed in IDOT quarterly reports are as follows:

	DBE		WBE	
	Achievement	Goal	Achievement	Goal
1984	10.8%	10.0%	3.4%	3.25%
1985	12.5%	10.0%	5.0%	3.5%
1986	11.0%	10.0%	2.2%	3.5%
1987	16.0%	10.0%	(Not reported separately after 1986)	

Since fiscal year 1984, IDOT has awarded over $2.0 billion dollars in Federal-aid contracts to prime contractors. Of the $2.0 billion, IDOT has reported that over $309 million, or 15 percent of the total, was awarded to D/WBEs.

IDOT's SBE is also responsible for ensuring that Federal requirements relating to the Supportive Services programs for disadvantaged individuals and businesses are met. It does this by (i) contracting with outside consultants to provide supportive services, and (ii) monitoring the consultants' performance. IDOT has received over $6.3 million in Federal funds since fiscal year 1977 for these Supportive Services programs.

In accordance with 23 CFR, Part 1, the Federal Highway Administration (FHWA) is responsible for the oversight of D/WBE and Supportive Services programs administered by State Highway agencies. FHWA is also responsible for approving the overall D/WBE goals submitted by IDOT.

B. Scope of Audit

Based on the Congressional request, we established four specific audit objectives. These objectives were to evaluate the adequacy of FHWA's and IDOT's internal controls and procedures for:

(1) certifying firms as eligible D/WBEs, including procedures for withdrawing certification and imposing sanctions against ineligible firms;

(2) monitoring D/WBEs' performance to ensure that they are performing the work for which they have contracted, waiving D/WBE participation requirements and assessing sanctions against contractors who fail to meet D/WBE goals;

(3) meeting approved D/WBE participation goals and reporting participation to FHWA; and

(4) monitoring assistance provided under supportive services contracts to ensure that funds are efficiently used to provide meaningful training opportunities for minorities, women and disadvantaged businesses.

The review was performed in accordance with the audit standards established by the Comptroller General and covered primarily fiscal years 1986 and 1987. We extended testing to years prior to fiscal year 1986 where necessary to perform an accurate evaluation of IDOT's program. Since IDOT procedures relating to certification were revised in February 1987, we concentrated our testing on transactions occurring after that date.

We performed the review at the FHWA Region 5 office, the FHWA Illinois Division office, and offices of the Illinois Department of Transportation (IDOT). We identified internal controls and procedures relating to each of the review objectives, and performed detailed tests of records, documents and transactions to determine whether these controls and procedures were functioning adequately. Where possible, we selected random samples of records, documents and transactions for review. Specifically, we evaluated IDOT's:

-review of applications submitted by firms seeking to be certified as eligible D/WBEs;

-field investigations of firms alleged to be ineligible;

-review of D/WBE commitment statements (showing planned D/WBE participation) submitted by prime contractors;

-imposition of sanctions where prime contractors do not meet D/WBE participation goals;

-unannounced field visits performed to verify that D/WBEs are actually performing the work described in the prime contractors' commitment statements;

-review of documentation submitted to justify a waiver of D/WBE participation on specific contracts; and

-review of supportive services contracts and quarterly status reports which described services provided to individuals and D/WBE firms under Supportive Services programs designed to provide on-the-job and business training.

We also contacted individuals and firms reportedly assisted under Supportive Services programs in order to assess the accuracy of reporting and the adequacy of services provided.

II. FINDINGS AND RECOMMENDATIONS

Finding A. Improvements Are Needed in IDOT's Certification Process

IDOT did not obtain required information needed to establish eligibility before certifying firms as eligible D/WBEs for 50 percent of the approved applications we reviewed. This occurred primarily because management controls had not been established to ensure that certification reviews were conducted in accordance with established procedures. As a result, 10 of the 20 D/WBE firms reviewed were certified without adequate documentation of one or more of the required eligibility factors.

Discussion

49 CFR, Part 23.45(f) establishes guidelines regarding state systems for certifying firms as eligible to participate in the D/WBE program. Further, these regulations set forth specific eligibility standards which must be met before a firm is certified. These eligibility standards require the states to ensure that only those contracts awarded to firms owned and controlled by minorities or women are counted toward meeting established D/WBE goals. Where a state's procedures for certifying eligibility are ineffective, its D/WBE achievement may be overstated.

IDOT has established formal procedures which require the review and analysis of all information submitted by a firm with its application for D/WBE certification. According to these procedures, an IDOT certification analyst is required to obtain and review supporting documentation sufficient to establish (i) ethnicity of the firm's owner(s), (ii) contribution of capital, (iii) contribution of technical expertise, (iv) operational and managerial control of the firm, (v) independence of the firm, and (vi) other factors, as appropriate. This review is typically performed at IDOT offices in Springfield, Illinois. However, where eligibility cannot be determined from information submitted with the application, the certification analyst is responsible for taking whatever action is necessary to ensure that the applicant is a bona fide D/WBE, including performing an on-site interview at the applicant firm.

Based on the analyst's desk review of the application and supporting documentation, an "audit report" is prepared. This report includes a recommendation to either approve or deny the firm's application, and is forwarded to the certification committee for action. The certification committee then makes the final decision regarding a firm's eligibility for participation in the D/WBE program.

We reviewed IDOT controls, policies and procedures relating to certification, and selected a random sample of 25 of 1033 applications submitted between October 1985 and September 1987. Of these 25 applications, 20 applications had been approved and 5 were denied.

We concluded that, although procedures for certifying D/WBE eligibility are adequate, IDOT management has not established controls to ensure that these procedures are followed. Specifically, for 10 of the 20 approved applications we reviewed, we found that the application file did not contain information needed to document the firm's eligibility as a D/WBE. Documentation omissions occurred for each of five eligibility factors and are summarized below. A detailed analysis by individual firm is shown in Exhibit A.

D/WBE Eligibility

Factors	Supported	Unsupported	Percent Unsupported
Ethnicity	19	1	5%
Capital contributions	12	8	40%
Expertise contributions	19	1	5%
Control of firm	18	2	10%
Independence	19	1	5%

Examples of inadequate support in each of these areas is described below.

Ethnicity

A firm was initially certified in 1983 and recertified every year thereafter. However, the certification file did not contain documentation showing that the owner was a member of a minority group, as required by IDOT procedures. This occurred because certification analysts did not follow IDOT's certification procedure which requires the review of birth certificates, naturalization papers, baptismal certificates or passports, where ethnicity cannot be determined by other means. Moreover, IDOT personnel also failed to document the visual confirmation of ethnicity which they contend was made in lieu of a documentation review.

Capital Contributions

A firm was certified as an eligible DBE even though the certification file contained no documentation showing that the owner's capital contribution was "substantial", as required by Federal regulations and IDOT procedures. The application indicated that the owner had started his construction contracting business with $175 in cash and $728 in tools. In our opinion, these capital contributions are not "substantial", given the fact that the firm was certified to perform a variety of construction services, including excavation and concrete work.

Expertise Contributions

A firm was certified as an eligible WBE even though there was no documentation in the certification file to support the owners' contribution of expertise, as required by 49 CFR, Part 23 and related IDOT procedures. Rather, file documentation showed only that the owners' spouses provided at least some of the construction expertise necessary to run the firm's day-to-day operations. Such information, we believe, should have alerted the certification analyst to question the owners' contention that they had contributed the expertise needed to manage the firm. This occurred because IDOT personnel did not follow an IDOT policy statement which requires the review of documentation to support the contribution of expertise by the owners of D/WBEs.

Control of Firm/Independence

A firm was certified as an eligible DBE firm even though documentation submitted raised significant questions regarding both the control of the firm and the firm's relationship with other companies. Specifically, the certification file contained documentation showing that the firm's owner was unable to read or write. In our opinion, the owner's illiteracy demonstrated that he may not have been capable of managing day-to-day operations of the firm, as required by Federal regulations. In any event, such information should have alerted the certification analyst to question the owner's contention that he was managing the firm's operations. Moreover, file documentation showed that the firm used equipment and materials owned by the contractor for whom the firm generally worked. In our opinion, this relationship demonstrated that the applicant firm was not independent, as also required by Federal regulations.

We also found that an on-site interview was conducted for only 1 of 10 of the firms whose eligibility we considered questionable. Where on-site visits were performed, we found that information essential to establishing the firm's eligibility had been obtained. Accordingly, we concluded that IDOT should have made on-site visits to resolve questions which were left unresolved by desk reviews.

Moreover, our review of 13 IDOT investigations disclosed that there was a strong link between inadequate documentation of eligibility requirements during the certification process and the reason for decertification action taken during the audit period. In seven of these instances, the decertification action was based on information which could have been, but was not, obtained during the certification/recertification process. Consequently, we believe that it is critical to the success of the D/WBE program to ensure that sufficient information is obtained during the certification process to ensure that a firm is actually eligible to participate in the program.

These deficiencies in the certification process were occurring because IDOT management believed that existing procedures were being followed and decisions were consistently supported by information contained in the application review file. Since there is inadequate assurance that certified firms are bona fide D/WBEs, the D/WBE participation reported to FHWA may be overstated.

* * * * *

During the course of our review, SBE officials noted that actions would be taken to ensure that established procedures were more closely followed and that personnel provide better documentation of their decisions. Moreover, in response to the October 1987 Federal regulations mandating on-site reviews, IDOT has established new procedures which require an on-site review of each firm submitting an application for certification. We commend IDOT for its continuing commitment to achieving an effective certification process.

Recommendations

We recommend that FHWA advise IDOT to establish management controls which ensure that established requirements for verifying and documenting ethnicity, capital contributions, expertise contributions, control of the firm and independence are consistently followed.

Management Comments

FHWA generally agreed that information obtained and decisions made during IDOT's certification process could be better documented. However, FHWA did not agree with the audit conclusion that IDOT failed to follow its own procedures when documenting that eligibility requirements had been met before certifying D/WBEs.

To improve IDOT's certification process, FHWA proposed alternative corrective actions. Specifically, FHWA proposed that IDOT (i) review its existing certification procedures and (ii) consider requiring additional documentation to better support certification determinations made.

Audit Comments

With respect to FHWA's concern that the examples discussed in the report do not support the audit conclusion that IDOT did not follow its established procedures, we provide the following additional comments. As referenced on page 5 of the report and included in Section A, Part 2-1 of the Policy and Procedures Manual, IDOT's procedures clearly call for the certification analysts (i) to obtain all required documentation from the applicant as referenced in the procedures, (ii) to perform an analysis of the information received, and (iii) where the documents or information do not support a conclusion that the eligibility standards have been met, to obtain additional information and if necessary to conduct interviews during an on-site visit at the D/WBEs' place of business. Our conclusion that IDOT did not always follow its established procedure is valid because, in each of the examples discussed, either adequate documentation was not obtained or the basis for the analyst's conclusion was not documented when other sources of information were relied upon. Further, where we concluded that sufficient information had not been obtained to support eligibility, we also found that the additional steps required by IDOT procedures had not been performed.

While we acknowledge that failure to document any particular eligibility requirement may not result in an ineligible firm being certified, our subsequent review of IDOT decertification investigations indicated that there is often a close link between the reason for decertification and the adequacy of documented eligibility requirements obtained during the certification process. Our review of 13 IDOT decertification investigations identified 7 instances where the certification action was improper and the certification application was deficient.

While FHWA has not agreed to implement our specific audit recommendation related to this finding, the proposed alternative corrective actions could improve IDOT's certification process. We have requested FHWA to advise us of the specific corrective actions planned or taken to improve documentation of the D/WBE application reviews, as well as the timetable for implementation of these actions.

Finding B. Improvements Are Needed in IDOT's Monitoring of Supportive Services to Individuals

Accomplishments under IDOT's On-The-Job Supportive Services program have been overstated. In addition, training positions have been filled with individuals already experienced in highway construction work as well as non-minority individuals. This is because IDOT has not (i) verified the accuracy of placements reported on contractor reports, and (ii) established adequate controls to ensure that targeted individuals are being placed in the program. As a result, contractors have overstated the numbers of placements, experienced individuals fill training slots intended for inexperienced minorities and women, and consequently inexperienced minorities and women are not given an adequate opportunity to participate in on-the-job training programs.

Discussion

23 CFR, Part 230.107 states that it is FHWA policy to assure the increased participation of minority groups and women in all phases of the highway construction industry (underlining added). Moreover, 23 CFR, Part 230.113 requires state highway agencies to establish procedures for the provision of "supportive services" to support approved training programs. In part, Part 230.113 requires the states to emphasize:

> "Services related to recruiting, counseling, transportation, physical examinations, remedial training, with special emphasis upon increasing training opportunities for members of minority groups and women" (underlining added).

Federal regulations target minorities and women since these groups historically have not had an opportunity to participate in the construction trades, and consequently do not have the experience needed by construction contractors. Where training opportunities are given to groups traditionally employed in the construction industry, or to individuals with substantial experience, we believe the Supportive Services program is not increasing training opportunities for minorities and women, as intended by Federal regulations.

In order to provide supportive services during fiscal years 1986 and 1987, IDOT contracted with the Illinois Operating Engineers (IOE) Union, the Springfield Urban League (SUL), and Midwest Women's Center. According to these agreements, contractors were required to provide recruitment, placement, counseling and follow-up services. Moreover, each contract established quarterly goals for the number of women and minorities to be placed in construction jobs. Under these contracts, placements are defined as IDOT-designated slots on highway construction projects as a trainee, journeyman, or participant in an apprenticeship program.

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In order to monitor the contractors' performance, IDOT established procedures which require contractors to report placements and other accomplishments quarterly. IDOT personnel review these quarterly reports to determine whether contractors are meeting contract goals.

We reviewed IDOT's supportive services contracts with the IOE and SUL, the two largest contractors providing supportive services, and IDOT's controls and procedures for reviewing contractor performance. We also verified selected individuals reported as placed on several quarterly reports. Specifically, we selected a sample of 9 of 84 individuals reported as placed on SUL's first quarter 1987 report, and 9 of 185 individuals reported as placed on IOE's fourth quarter 1986 report. We contacted these 18 individuals in order to assess the accuracy of contractor's reporting of accomplishments.

Based on our review, we found that placements under the supportive services program were significantly overstated. In 9 of 18 instances, individuals reported as "placed" had not been placed by contractor personnel, but had simply been provided counseling or follow-up services. While such services were allowable under supportive services contracts, they should have been reported in the proper categories. In order to detect services incorrectly reported as placements, IDOT should have more closely reviewed the contractors' quarterly reports. One effective method for verifying the accuracy of information submitted is to test or confirm a random sample of placements.

Examples of services which were incorrectly reported as placements follow:

Incorrectly Reported Placements

An individual was reported as placed even though the SUL field representative had simply counseled him regarding ongoing racial problems on his job site. The field representative apparently believed that the counseling visit could be treated as a placement, since racial problems potentially could affect the individual's ability to continue on the job. However, since counseling services do not produce a training slot, they should not be treated as a placement for reporting purposes. In addition, the IOE also reported that it had placed the individual on this project. Although we questioned IDOT personnel regarding the double reporting, they were unable to provide us with an explanation.

A second individual reported as placed on the IOE's 4th quarter, 1986 report had not received assistance from the IOE in obtaining his position. In fact, the individual had been periodically working as an equipment operator since before 1983. Apparently, the IOE field representative believed he could report the individual as placed because he had routinely contacted him to discuss his employment status. However, verifying an individual's employment status does not result in a training position, and accordingly, should not be counted as a placement.

In addition, even where individuals were placed by contractor personnel, we determined that they often had extensive experience or were journeymen in their trade. Specifically, 7 of the 18 individuals reported as placed had as much as 4 years' experience and training in their trade. Where experienced individuals are placed in training programs, inexperienced minorities and women are not given the opportunity to participate in training programs. Accordingly, the intent of the supportive services program is not met.

Examples of experienced and non-minority individuals who were reported as placed are shown below.

Placement of Experienced and Non-minority Individuals

An individual was reported as placed on the IOE's 4th quarter, 1986 status report even though he owned his own firm, was a journeyman, and had substantial experience in the construction industry. During an interview with OIG staff, the individual noted that he works for contractors with whom he has had business dealings when his own business is slow. Even though this individual was experienced in his trade, the supportive services field representative believed he could report him as a placement. Apparently, this was because the individual had attended an IOE-sponsored seminar. However, in our opinion, placing an individual with substantial experience in the construction industry as a trainee is not consistent with the intent of the Supportive Services program.

A second individual was reported as placed on the SUL's 1st quarter, 1987 status report even though he had worked for the same contractor for several seasons. The field representative apparently felt that he could report this individual as a placement since he had contacted the contractor at a pre-construction meeting and offered to facilitate the placement of disadvantaged individuals. However, the individual in question was already working for the contractor, had extensive experience and therefore should not have been reported as a trainee placement.

A non-minority individual reported as placed on the IOE's 4th quarter, 1986 report had applied for an apprenticeship program without IOE's assistance or support. During an interview with OIG staff, the individual noted that he had been accepted into the apprenticeship program and had worked for the same contractor for three years. Nonetheless, the IOE field representative apparently believed he could be placed as a trainee on a Federally funded construction job.

As a result, experienced individuals fill training slots intended for inexperienced minorities and women. These conditions occurred because IDOT has not (i) verified the accuracy of placements reported on contractor reports, and (ii) established adequate controls to ensure that targeted individuals are being placed in the program.

Based on our review, we concluded that IDOT needs to improve its monitoring of the supportive services provided by its contractors. Although Federal funding for this program has recently been eliminated, we believe such improvements are necessary to ensure that disadvantaged individuals benefit as intended by the program.

* * * * *

During the course of our review, IDOT noted that it was developing new procedures which call for the random verification of placements reported on contractors' quarterly reports. We commend IDOT management for its commitment to improving the monitoring of its Supportive Services program, but believe that even more can be done to ensure that supportive services are provided to targeted groups.

Recommendations

We recommend that FHWA (1) monitor IDOT's efforts to implement a new procedure for verifying the accuracy of reported placements, and (2) advise IDOT to establish new controls and procedures to ensure that contractors are placing inexperienced minorities and women as intended by their contracts and Federal regulations.

Management Comments

FHWA generally concurred with the portion of the finding which relates to incorrectly reported placements, and has proposed corrective actions to address this problem. Specifically, FHWA proposed that IDOT provide guidance to supportive services consultants detailing how placements should be defined and reported.

With respect to the second section of the finding relating to placement of experienced individuals, FHWA did not agree with our audit conclusion, and accordingly has not agreed to implement the related recommendation. FHWA maintains that it is entirely appropriate to use supportive services funding to place relatively experienced workers in training slots until they attain journeyman status.

Audit Comments

Although FHWA generally concurred with the portion of the finding relating to incorrectly reported placements, the specific steps taken or planned to implement proposed corrective actions were not described, nor was a timetable for implementation provided. Therefore, we ask FHWA to provide a further explanation of these actions in connection with its response to this report.

With respect to FHWA's disagreement with the portion of the finding related to training of experienced and non-minority individuals, we believe that the supportive services program was established to provide training opportunities to inexperienced minorities and women. Further, we believe that IDOT has allowed contractors to put improper emphasis on the placement of experienced individuals, including journeymen who have extensive experience in their trade. For example, for the quarterly periods reviewed, we found that 135 of 705 or 19 percent of the individuals reported as placed by contractors were already journeymen. Therefore, this program is not operating as intended. We request that you reassess your position on this matter and advise us of your final decision, including corrective actions to be taken and a timetable for implementation of these actions.

Finding C. Improvements Are Needed in Documenting Efforts to Meet D/WBE Participation Goals

IDOT has granted waivers without properly documenting whether contractors have made good faith efforts to meet D/WBE participation goals. This occurred because IDOT management had not established controls to ensure that waivers were granted in accordance with established procedures. As a result, there is reduced assurance that D/WBE firms have an opportunity to submit quotes on Federally funded contracts where prime contractors have not made good faith efforts to obtain D/WBE participation.

Discussion

49 CFR, Part 23.45, Appendix A requires the states to make certain determinations where contractors contend that they are unable to meet D/WBE participation goals for Federally funded work. Specifically, states are required to assess whether a contractor has made an effort which "a competitor actively and aggressively seeking to meet (D/WBE) goals would make" before they award the related contract. Efforts to actively and aggressively meet D/WBE participation goals are commonly referred to as good faith efforts.

In order to comply with Federal regulations, IDOT established a procedure which describes how contractors must demonstrate that they have made good faith efforts to identify qualified D/WBE firms. Contractors requesting a waiver from D/WBE participation goals are required to substantiate their efforts with specific documentation, such as copies of bid solicitation lists, evidence that IDOT personnel were contacted, and evidence that supportive service personnel were contacted. According to IDOT procedures, such documentation demonstrates that the contractor made a good faith effort to identify D/WBE firms qualified to bid on Federally funded work items.

We reviewed IDOT controls and procedures relating to the use of waivers where contractors contend that they are unable to identify qualified firms to meet D/WBE participation goals. We also reviewed a random sample of 7 of the 135 pre-award contract waivers granted between January 1986 and August 1987.

Although IDOT's written procedures are generally adequate, IDOT management has not established controls to ensure that these procedures are consistently followed. We found that IDOT was not requiring contractors to document their efforts to identify qualified D/WBEs. Specifically, contractors' good faith efforts had not been adequately documented in 3 of 7 instances, as described below:

> In one instance, a waiver from the requirement to award a $3,041 work item to a D/WBE was granted even though the prime contractor had failed to solicit assistance from IDOT personnel in obtaining D/WBE participation. Although the contractor claimed that he had contacted 40 D/WBE firms, he also stated that only one bid was submitted. Moreover, he claimed that the bid was $3,000 more

than the estimated value of the work item. However, IDOT did not verify that these claims were supported.

In the second instance, a waiver from the requirement to award a $3,419 work item to a D/WBE was granted even though the prime contractor had failed to solicit assistance from IDOT's supportive services contractor in obtaining D/WBE participation. The prime contends that, since the one bid he received from a certified WBE was 11 percent higher than the lowest bid received, he was unable to award the subcontract to the WBE. However, IDOT again did not confirm the accuracy of the contractor's statements.

In the third instance, a waiver from the requirement to award a $10,932 work item to a D/WBE was granted even though the prime contractor failed to solicit assistance from IDOT personnel in obtaining competitive bids from D/WBEs. The prime contractor claimed that he had contacted 149 D/WBEs, but had received quotes from only 23 of these firms. Moreover, he claimed that the bids received were all 20 to 69 percent higher than the lowest bid received from a non-minority firm. However, IDOT did not verify the accuracy of these statements.

In each of these instances, waivers were granted even where contractors had not provided required documentation. Further, although IDOT personnel stated that the contractors in these instances had demonstrated their good faith efforts, the rationale for their decision was not documented.

As a result, D/WBE firms may not have had the opportunity to submit quotes on Federally funded contracts where prime contractors have not made good faith efforts to obtain D/WBE participation. Had established procedures been followed, the prime contractors may well have been able to identify D/WBEs qualified to perform the work items in question.

* * * * *

During the course of our review, IDOT management conceded that its rationale for granting waivers could be better documented. Such improved documentation is needed to ensure that Federal regulations are followed.

Recommendations

We recommend that FHWA advise IDOT to (1) document that contractors have made good faith efforts to identify qualified D/WBE firms, as prescribed by IDOT's own procedures, and (2) explain the rationale for granting a waiver where good faith efforts have not been documented.

Management Comments

FHWA generally concurred with this finding and has proposed corrective actions to address this problem. Specifically, FHWA agreed to require that IDOT (i) review its procedures for documenting good faith efforts and (ii) modify them as needed to ensure that such good faith efforts are verified before waivers are granted.

Audit Comments

FHWA has concurred with this finding and proposed corrective actions which satisfy the intent of our recommendation. However, FHWA still needs to provide us with a timetable showing completion dates for these proposed actions. Therefore, we ask FHWA to provide a further explanation in connection with its response to this report.

(2 pages)

Schedule Depicting the Adequacy of Support for D/WBE Certification for Firms Reviewed

Requirement Standards for D/WBE Certification

D/WBE Firm	Ethnicity(1)		Capital Contributions(2)		Expertise Contributions(3)		Control(4)		Independence(5	
Support Documented	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
A	X		X		X		X		X	
B	X		X		X		X		X	
C	X			X	X		X		X	
D	X			X	X		X		X	
E	X		X		X		X		X	
F	X		X		X			X		X
G	X			X	X		X		X	
H	X		X		X		X		X	
I	X		X		X		X		X	
J	X		X		X		X		X	
K	X		X		X		X		X	
L	X			X	X		X		X	
M	X			X	X		X		X	
N	X		X		X		X		X	
O	X			X	X		X		X	
P		X		X	X		X		X	
Q	X			X		X	X		X	
R	X		X		X		X		X	
S	X		X		X			X	X	
T	X		X		X		X		X	
	19	1	12	8	19	1	18	2	19	1

Footnotes:

(1) Ethnicity must be supported by birth certificates, naturalization papers, baptismal certificates or passports, where it cannot be determined by other means.

(2) Capital contributions must be supported by evidence that they were made by the owner(s) and were substantial given the needs of the business.

(3) Expertise contributions must be supported by evidence that they were made by the owner(s) and were substantial given the needs of the business.

(4) Control must be supported by evidence that the owner(s) have the power of making decisions on matters of operations, management and policy.

(5) Independence must be supported by evidence that the firm is not dependent on other firms' equipment, materials or labor.

(2 pages)

Memorandum

U.S. Department
of Transportation
**Federal Highway
Administration**

Subject: Illinois - OIG Draft Report on DBE and Supportive Services Programs

Date: June 1, 1988

Reply to Attn. of: HAD-05

From: Director, Office of Administration
Homewood, Illinois

To: Mr. Ronald H. Hoogenboom
Regional Manager
Office of the Inspector General
Chicago, Illinois

Your April 15 memorandum and Mr. Werner's May 19 Route Slip requested our review of the subject draft report. Our comments on the three overall findings in the report follow:

Finding A

The overall finding is that IDOT did not obtain required information to establish eligibility before making DBE certification decisions.

From the examples discussed in the report following the State's finding, we believe the most IDOT could be cited for was inadequate documentation. An example is the Ethnicity Comment on page 6. In this example, the report indicates that IDOT's file did not document that a particular firm's owner is a minority. The report goes on to state that the reason was that IDOT's procedure was not followed, which requires review of birth certificates, etc., where ethnicity cannot be determined "by other means." In this instance, IDOT determined ethnicity by other means, i.e., by personal knowledge of the firm's owner. Thus, IDOT indeed did follow their procedures. While in hindsight one could perhaps fault IDOT for not documenting this fact, it is important to note that their procedures do not require such documentation.

In another example regarding Control of Firm/Independence, the report indicates that a particular firm's owner's illiteracy should have alerted IDOT to question whether the owner was indeed managing the firm. As in the previous example IDOT was familiar with the firm's owner, and believed that in spite of the owner's literacy problems, he was still in control of the firm's operations.

In another example, Capital Contributions, it is stated that IDOT's file contained no documentation that a $900 initial contribution by the owner of a firm was considered to be "substantial." In IDOT's opinion, this contribution was substantial. Again, it would probably have been well if the file contained a positive statement that this contribution was considered "substantial," however current IDOT procedures do not call for such documentation.

- more -

The report recommends that FHWA advise IDOT to establish management controls to ensure that established requirements for documenting various factors be followed. We cannot support this recommendation since the report mentions no examples of where existing procedures were not followed. However, we would support a recommendation that IDOT review their procedures and consider requiring additional documentation to better support their certification determinations.

Finding B

This finding essentially questioned the number of placements of OJT trainees reported by supportive services consultants and the placement of experienced workers into training positions.

The data for this finding was based on interviews with 18 persons who were reportedly placed by supportive services consultants. The report questions the placement of 9 of these 18 persons. While the supportive services consultants may be able to support the counting of some of these 9, we believe there may be some confusion as to what constitutes a placement. We would support a recommendation that IDOT provide supportive service consultants with improved guidance in this respect.

Regarding the placement of experienced workers, we note that it takes many hours of training for a person to become a journeyman worker, and that it is entirely acceptable to place relatively experienced workers in training slots until they attain journeyman status.

Finding C

The finding states that IDOT did not verify prime contractor's good faith efforts in attempting to meet DBE subcontracting goals. We do not know from the report whether the cited cases were examples of failure to verify or failure to document the verification action.

In any event, we would support a general recommendation that IDOT review their procedures in this respect and modify them as needed to ensure that contractor good faith efforts are indeed verified before waivers are granted.

The comments prepared by IDOT in response to the draft report are attached. IDOT has requested that where issues were identified in the draft report but not resolved, their comments be included in the final report without editing or deletions.

We appreciate the opportunity to review this draft. If you have any questions regarding our above comments, please contact us.

DC Harvey
D. C. Harvey

Attachment

(25 pages)

NOTE:

Appendix B contains comments on the draft report submitted by the Illinois Department of Transportation, which they asked to be included in the final report without editing or deletions. However, in order to protect individuals' privacy, references to specific firms and individuals were deleted. Names have been replaced by letter identifiers which correspond to the designation in Exhibit A of this report. No other alterations or deletions were made to the text.

Our reply to IDOT's concerns is contained in Appendix C. Number designations have been added in the margin to assist is correlating our reply with IDOT's response.

Illinois Department of Transportation
Office of Finance and Administration
2300 South Dirksen Parkway/Springfield, Illinois/62764

May 27, 1988

Mr. Jay W. Miller
Division Administrator
Federal Highway Administration
320 West Washington - 7th Floor
Springfield, IL 62701

Subject: Draft Report on the Administration of DBE/WBE and Supportive Services Programs in Illinois

Dear Mr. Miller:

The Illinois Department of Transportation appreciates the opportunity to respond to the the draft report on its DBE/WBE and supportive services programs. We feel confident that our program is sound from both an administrative and operations standpoint when compared to other DBE/WBE programs.

The draft report presents three comments:

Finding A - Improvements Are Needed in IDOT's Certification Process

Finding B - Improvements Are Needed in IDOT's Monitoring of Supportive Services to Individuals

Finding C - Improvements Are Needed in Documenting Efforts to Meet DBE/WBE Participation Goals

After review of the draft report and discussion with the OIG, it is apparent we have a different interpretation of what constitutes adequate documentation under 49 CFR 23 than the OIG. We also believe there is adequate documentation in the files to support our certification decisions. Our comments are as indicated in the attachment.

If we are unable to resolve the issues identified in the draft report by the OIG, we ask that our comments be included in the final report without editing or deletions.

RECEIVED

MAY [illegible] 1988

[illegible]
SPR[illegible]LLINOIS

Mr. Jay Miller
Page 2
May 26, 1988

My staff and I are available to discuss this matter at your convenience.

Sincerely,

Al S Greco

Al S. Greco, Director
Finance and Administration

cc: John Melchner, U.S.D.O.T. Inspector General

FINDING A

Improvements Are Needed in IDOT's Certification Process:

IDOT did not obtain required information needed to establish eligibility before certifying firms as eligible D/WBEs for 50 percent of the approved applications reviewed. This occurred primarily because management controls had not been established to ensure that certification reviews were conducted in accordance with established procedures. As a result, 10 of the 20 D/WBE firms reviewed were certified without adequate documentation of one or more of the required eligibility factors.

IDOT Response:

The Illinois Department of Transportation strongly disagrees with the finding that required information was not obtained from DBE/WBE firms prior to their certification. In each of the twenty-five case files which the Office of the Inspector General sampled (2% of the 1,033 files acted on during the period), there was adequate information to make a reasonable determination as to either the eligibility or ineligibility of the firms. 1/ If this were not the case, why was the Department able to deny the certification of twenty percent (5 of 25) of the cases the Inspector General reviewed? The Inspector General claims that " . . . management controls had not been established to ensure that certification reviews were conducted in accordance with established (IDOT) procedures." IDOT believes the Inspector General did not either understand or comprehend our procedures. Those that are familiar with the federal regulations that govern the DBE/WBE assistance program (49 CFR, Part 23) know that these regulations have changed dramatically since the initial U.S.D.O.T. minority participation program was adopted in 1980. The biggest change in these regulations occurred as a result of the Surface Transportation Assistance Act of 1982 when in 1983 formal funding goals were established for disadvantaged businesses (49 CFR, Part 23.61). However, even with the numerous changes that have taken place regarding these regulations during the last eight years, they still provide few specific instructions as to the documentation that is needed for applicant businesses to provide in order to meet the D/WBE eligibility standards (49 CFR, Part 23.53). Rather than writing and adopting uniform certification documentation procedures which would apply to all recipients, U.S.D.O.T. has chosen to require the individual recipients (State transportation and highway departments) to establish their own procedures. Consequently, not unlike the regulations themselves, each State transportation or highway department has been embroiled in the unending process during the last eight years of writing, refining, rewriting and implementing specific procedures for certifying and recertifying D/WBE firms that they believe reasonably meet the broad eligibility standards set forth in 49 CFR, Part 23. During the Inspector General's review of these twenty-five certification files and how IDOT's certification procedures were administered, they generally made two mistakes, either they incorrectly 2/ applied our written 1987 procedures for determining eligibility of new firms to firms that had been certified for several years or they took a very narrow viewpoint in their interpretation of the federal eligibility standards. In either case, their claim that IDOT management controls were lacking in order to ensure that certification reviews were conducted in accordance with established IDOT procedures was both unwarranted and misleading. Specifically, our rebuttal on a case by case basis for each eligibility standard is as follows. 3/

ELIGIBILITY STANDARD FINDING

Ethnicity:

A firm was initially certified in 1983 and recertified every year thereafter. However, the certification file did not contain documentation showing that the owner was a member of a minority group, as required by IDOT procedures. This occurred because certification analysts did not follow IDOT's certification procedure which requires the review of birth certificates, naturalization papers, baptismal certificates or passports, where ethnicity cannot be determined by other means. Moreover, IDOT personnel also failed to document the visual confirmation of ethnicity which they contend was made in lieu of a documentation review.

IDOT Response:

Company P - Mr. P, a fifty-two year old black contractor, is the sole owner of this firm which was originally formed in 1981 and certified in July, 1983. This firm has continued to be recertified annually since 1983. At the time of the original certification of Company P it was the Department's practice, as is the case at the present time, to not require copies of birth certificates, driver's licenses, baptismal certificates, etc. if ethnicity of the owner could be visually vouched for by the SBE analyst or other IDOT staff member who was presenting the case to the certification committee. This was the case for Mr. P. The file provides information which proves that IDOT employees involved in the D/WBE program in 1983 had met with Mr. P at the time of his certification and were knowledgeable that he was black. Since his certification, Mr. P has been an active member and on the board of directors of the Midwest Contractors for Progress Association, an organization of black contractors. In this capacity, he meets several times a year with Department staff. We have never believed it necessary to request a copy of Mr. P's drivers license, birth certificate, baptismal certificate or other form of documentation in order to prove his ethnicity due to the frequent contacts that we have had with Mr. before and after his original certification. Our certification procedures states the review of birth certificates, naturalization papers, baptismal certificates or passports are necessary where ethnicity cannot be determined by other means. We have found visual contact, in the case of most minority groups, to be the best means of determing ethnicity. As previously mentioned, it was apparent from the Company P case file that visual contact with Mr. P had taken place dating back to 1923. 4/

CAPITAL CONTRIBUTION

A firm was certified as an eligible DBE even though the certification file contained no documentation showing that the owner's capital contribution was "substantial", as required by Federal regulations and IDOT procedures. The application indicated that the owner had started his construction contracting business with $175 in cash and $728 in tools. In our opinion, these capital contributions are not "substantial", given the fact that the firm was certified to perform a variety of construction services, including excavation and concrete work.

IDOT Response:

Company C - Mr. C, a black contractor, is the owner of Company C which operates as a sole proprietorship. This is the firm specifically cited by the Inspector General in the finding which states "in the opinion of the (OIG) auditor, contributions of $175 in cash and $728 in tools are not substantial." We hope the Inspector General provides us with the criteria used in establishing a cutoff point for the level at which a substantial investment is reached by a newly formed DBE company. It has always been IDOT's position that in determining whether a "real and subtantial investment" had been made by the DBE owner, one has to consider such items as the size of the company; whether a reasonable sum was paid for the assets purchased in the case of a corporation; whether the DBE owner in fact paid for the assets purchased or merely signed a note payable to a non-socially and economically disadvantaged owner. The federal eligibility standards in 49 CFR, Part 23.53 (a)(6) provide these examples of insufficient capital contributions by stating that "Examples of insufficient contributions include a promise to contribute capital, or a note payable to the firm or its owners who are not socially and economically disadvantaged." IDOT believes one of the primary goals of the program is to provide an opportunity to qualifying individuals to start small companies and grow in the construction industry through the opportunities available in this program. Mr. C started working in the highway construction industry in 1976 and continued to do so until he formed Company C in 1986. Company C remains a sole proprietorship and since its certification in April, 1987, has received two small jobs through separate prime contractors in conjunction with this program. One of these jobs was for the installation of guardrail and the other was for miscellaneous concrete work. Both jobs had values of less than $45,000 each. Mr. C continues to operate his company from his home with the help of his wife. Company C now has three employees and its balance sheet for the period ending December 31, 1987 indicated that the company's total assets had increased to $15,434.35. We believe that Company C should have been looked upon by the OIG as a model company within this program and not as a firm that should have been denied certification under the existing eligibility standards. 5/

Company D - This firm is 100% owned by D-1 and D-2 (husband and wife) both of whom are black. Originally certified in 1983, this construction firm has been an active participant in the program as a subcontractor since this time. The OIG in their review of this case file could not find evidence of canceled checks to support an investment contribution in this firm, therefore they were cited as not having made a "real and substantial investment." This firm at the time of their certification in 1983 had been in operation with Mr. and Mrs. D as the sole owners for sixteen years. The D's , in 1983 during the period they were being certified, decided that they would form a corporation. In order to fund this corporation, the Company D jointly secured a bank loan of $100,000 for working capital for the company . IDOT considered this evidence of a "real and substantial investment." A copy of this loan agreement was provided to the OIG. 6/

Company G - This WBE company was incorporated in 1977 by its two owners G-1 and G-2. G-1 owns 60% of the company's stock and her husband, G-2 (who is employed on a full time basis by a construction firm), owns the remaining 40% of the stock. This ownership ratio has not changed since the firm's original incorporation. In 1982, Company G applied for certification and submitted as evidence of a "real and substantive investment" by Mrs. G copies of the existing stock certificates which were originally issued in 1977. The OIG cited Company G for not providing copies of canceled checks drawn on the account of Mrs. G to pay for this stock or evidence of other assets being owned by Mrs. G being contributed by her at the time of the company's formation. IDOT has always taken the position of accepting original stock certificates as evidence of investments by qualifying owners when the company's original formation precedes the request for certification for a period greater than one year or the transaction occured prior to the establishment of the DBE program in 1982. 7/

Company L - This DBE/WBE construction company is owned by Ms. L , who operates the company as a sole proprietorship. Ms. L is a single, black woman. Ms. L formed her company in January, 1985 and applied for certification in March, 1987. By the time she applied in 1987, her company was already well established. Included with her application she provided documentation substantiating seal coat work she had performed during the previous two years for Great American Federal Savings, Homemakers Furniture Company, and two office buildings in suburban Chicago. Ms. L also provided audited financial statements for the firm for the year ending 1986 which listed her revenues for this year at $64,911.10. In light of this information and the fact that she was the the only person's whose name was authorized on the company's bank account signature authorization card, IDOT did not believe Ms. L's company should be denied certification because she could not provide a copy of her 1985 canceled check to prove her initial investment in her firm. 8/

9/ Company M - This WBE landscaping company operates as a corporation and is 100% owned by Ms. M. The company is certified by the Iowa Department of Transportation as well as by ourselves. Originally certified by Illinois in 1980, Ms. M formed her company in 1977. The company's case file provides documentation on assets owned by the firm at the time of its original certification and subsequent recertifications. We considered this adequate documentation to support Ms. M's investment in her company.

10/ Company O - This company was formed by Mr. O, a black male, in 1971 as a sole proprietorship. Company O was originally certified in 1981 by IDOT. At this time, Mr. O presented titles to his trucks in order to document a real and substantial investment in his firm. Copies of these titles were provided to the OIG.

11/ Company P - This firm is 100% owned by Mr. P, a fifty-two year old black contractor, and is operated as a sole proprietorship. Originally formed in 1981, Company P requested and was approved certification by IDOT in 1983. At the time of his certification, Mr. P provided titles to equipment he owned and used in the business to substantiate his investment in his firm. The Department considered this adequate documentation to support his investment in his firm which, at the time, was over two years old.

12/ Company Q - This WBE electrical contracting firm is 70% owned by three women, Ms. Q-1, Ms. Q-2 and Ms. Q-3. Originally denied certification by IDOT in 1985, the firm, after a restructure of its ownership, reapplied for certification in 1987 and was approved. This firm is due to be recertified October 1, 1988. To date, this firm has not received any contracts in conjunction with this program.

EXPERTISE CONTRIBUTIONS

A firm was certified as an eligible WBE even though there was no documentation in the certification file to support the owners' contribution of expertise, as required by 49 CFR, Part 23 and related IDOT procedures. Rather, file documentation showed only that the owners' spouses provided at least some of the construction expertise necessary to run the firm's day-to-day operations. Such information, we believe, should have alerted the certification analyst to question the owners' contention that they had contributed the expertise needed to manage the firm. This occurred because IDOT personnel did not follow an IDOT policy statement which requires the review of documentation to support the contribution of expertise by the owners of D/WBEs.

Expertise Contributions:

Company Q - This WBE electrical contracting firm as 13/ mentioned previously was originally denied certification by IDOT in 1985. After restructuring the ownership and control of the firm which was originally incorporated in 1984, the three women who own 70% of the company's stock reapplied in 1987 to be certified as a WBE. In conjunction with their application, the firm sent a letter from IDOT's Traffic Operations Engineer in the Peoria area vouching for the ability of the women who manage the firm's operation. This letter states "I have been acquainted with Ms. Q-1 and Mrs. Q-2 for three years. The last three years, I have dealt professionally with Mmes. Q-1 and Q-2 and have found them competent and well informed in the everyday happenings of their company. The fact they are not electricians has not hindered them in being well informed on the status of jobs, the whereabouts of their people, what is needed to complete a job and other aspects of the company. These tasks, I feel, demonstrate that Mmes. Q-1 and Q-2 have the necessary attributes for successfully running a company such as Company Q ." The IDOT certification committee believed that this was adequate documentation to prove the expertise contribution of the women owners of Company Q . This letter of recommendation was in the case file of Company Q at the time of the OIG's review.

CONTROL OF FIRM/INDEPENDENCE

A firm was certified as an eligible DBE firm even though documentation submitted raised significant questions regarding both the control of the firm and the firm's relationship with other companies. Specifically, the certification file contained documentation showing that the firm's owner was unable to read or write. In our opinion, the owner's illiteracy demonstrated that he was not capable of managing day-to-day operations of the firm, as required by Federal regulations. In any event, such information should have alerted the certification analyst to question the owner's contention that he was managing the firm's operations. Moreover, file documentation showed that the firm used equipment and materials owned by the contractor for whom the firm generally worked. In our opinion, this relationship demonstrated that the applicant firm was not independent, as also required by Federal regulations.

IDOT Response:

Company F is owned by Mr. F, a fifty-seven year old black contractor, and operated as a sole proprietorship. Company F has been in business since 1977 and at the time of its initial certification in 1985 provided evidence that it was a going concern which was owned and operated by Mr. F. This is the firm which the Inspector General cited in the finding by stating "the owner's illiteracy demonstrated that he was not capable of managing day-to-day operations of the firm . . ." The Department disagrees strongly with this statement. We have been unable to find any portion of the Federal Regulations which requires that DBE owners be literate. We have several owners in the program who have sub-standard reading and writing skills, but who have the necessary construction background to cause the direction and management of their companies. Such is the case with Mr. Bowden who has eighteen years construction experience, the last eleven years being spent managing his own firm. For the record, Mr. F is not illiterate but does read and write at a sub-standard level. To compensate for his reading deficiency, Mr. F receives assistance from his wife who reads necessary documents to him and prepares general correspondence for the business. The last claim which the Inspector General made regarding Company F is also in error. It is not uncommon for DBE subcontractors to rent equipment from the prime contractors they are working for on particular jobs. Generally, this is the least expensive means for the DBE to supplement his equipment needs. Company F performs work on an ongoing basis as a subcontractor for several different prime contractors and is not linked to any non-socially and economically disadvantaged firm. 14/

Company S - Mrs. S owns 100% of the stock of Company S, a WBE trucking firm. This firm was founded in 1963 by Mrs. S and her husband, Mr. S. They managed the company jointly until 1973 when Mr. S retired from active participation in the company because of illness. Subsequently, Mr. S died in 1982. Mrs. S is today the President and Chairman of the Board of Company S. While Mrs. S is now sixty-four years old, it is apparent that she is active in the daily management and control of this company. 15/

ON-SITE REVIEWS

We also found that an on-site interview was conducted for only 1 of 10 of the firms whose eligibility we considered questionable. Where on-site visits were performed, we found that information essential to establishing the firm's eligibility had been obtained. Accordingly, we concluded that IDOT should have made on-site visits to resolve questions which were left unresolved by desk reviews.

IDOT Response:

We believe that our explanation of the previous findings is adequate justification for our not having performed on-site reviews of the firms the Inspector General questioned. As a result of October, 1987, changes in 49 CFR, Part 23.45 (f)(3) on-site reviews are now performed on all new applications prior to certification.

FINDING B

Improvements Are Needed in IDOT's Monitoring of Supportive Services to Individuals:

Accomplishments under IDOT's on-the-job supportive services program have been overstated. In addition, training positions have been filled with individuals already experienced in highway construction work as well as non-minority individuals. This is because IDOT has not (i) verified the accuracy of placements reported on contractor reports, and (ii) established adequate controls to ensure that targeted individuals are being provided meaningful training opportunities. As a result, contractors have overstated the numbers of individuals placed, and inexperienced minorities and women are not given an adequate opportunity to participate in on-the-job training programs.

IDOT Response:

The second portion of the last sentence is not accurate. See (ii). 16/

(i) Incorrectly Reported Placements:

The Bureau of Small Business Enterprises performs random sampling on individuals placed under the Illinois Operating Engineers and Springfield Urban League Programs and will continue to do so but with increased efforts. In past cases where there were discrepancies, additional follow up was made to Supportive Services Consultants and EEO Officers. In most cases the individual trainee was not aware of efforts taken to see that his/her placement occurred. The Supportive Services Consultant works with union representatives and since the State of Illinois recognizes the rights of unions, the respective unions must place the individuals in job slots. The efforts which Supportive Services Consultants take are, in some cases, just short of the actual union referral. 17/

The Department is unsure as to the origin of examples cited in the draft report where 9 of 18 individuals were reported as "placed", but in actuality counseling and follow up services were provided. Specifically, in February the Department was given a list of 22 individuals sampled by OIG under placement services. We are unsure if these 18 individuals are the same as indicated in the previous draft report.

In instances where alleged double counting occurred, the Department is aware that different consultants may work with the same individuals and that each consultant feels it should be considered their respective placement as a result of that individual being placed through the union. This is too difficult to control. The use of more than one supportive services organization increases the likeliness for this to occur. However, the organizations are assigned to different crafts which should provide a safeguard against the double counting dilemma.

With respect to quarterly reporting, the Bureau has in place Supportive Services Procedures, Section C, Number 2-2 (3/88) which state in part that the Supportive Services Analyst reviews the report and spot checks the report by placing random telephone calls to individuals listed on placement cards/computer printouts to verify: a) their placement on a job, whether as a trainee, laborer, journeyman or in an apprenticeship program, and b) the need for, and adequacy of, the assistance provided by the consultants.

In addition, the Supportive Services Analyst is to schedule random office/field visits with OJT consultants to 1) assess program progress and to evaluate their performance on an as-needed basis, and 2) analyze their records and documentation in relation to submitted progress reports and billings. In next year's program effective July 1, 1988, IDOT also intends to regionalize the supportive services concept and use one organization for each geographic area. This should eliminate any double counting.

(ii) IDOT has not established adequate controls to ensure that targeted individuals are being provided meaningful training opportunities:

The Department does not understand the basis for which this conclusion was drawn. To make the statement that individuals are not being provided meaningful opportunities based on these examples is, in our opinion, inappropriate. 18/

OIG recommendations advise IDOT to establish new controls and procedures to ensure that contractors are placing inexperienced minorities and women. During discussions with OIG staff, we have tried to explain that, on occasion, an experienced minority has been referred to a jobsite when a minority trainee is not readily available. We stand by that policy. The Department currently establishes the number of trainee slots on projects in excess of those required by FHWA. Our Department's goal is approximately 400 slots rather than the 300 that are required by FHWA. However, you must remember that the trainee program is not exclusive to minorities and women. Non-minority males are able to participate, but our emphasis has been on minority and female recruitment and this is reflected in the goals achieved by our Supportive Services organizations. Of the 300 slots assigned to supportive services contracts (175-IOE, 125 SUL in 1987), assistance to non-minority males in final placement figures is not counted toward this goal. The Supportive Services Consultants, however, do not turn away these non-minority individuals if they have asked for assistance.

We reiterated that the overall counting of placements reflects only minority and female individuals. IDOT does not feel that new controls need be established. Again, the three cases cited are exceptions to the rule and are not representative of this program.

FINDING C

Improvements are needed in documenting efforts to meet DBE/WBE Participation Goals.

IDOT has granted waivers, without properly documenting whether contractors have made good faith efforts to meet DBE/WBE participation goals. This occurred because IDOT management had not established controls to ensure that waivers were granted in accordance with established procedures. As a result, there is reduced assurance that DBE/WBE firms are given the opportunity to bid on Federally-funded contracts for which they were qualified.

IDOT Response:

The last sentence of the above finding is not accurate. It is important to note that IDOT in no way lowers its District or Statewide goals as the result of approved waiver requests. Each District is assigned a goal which will enable IDOT to meet its Statewide goal. When a waiver is approved, that District will set higher goals on subsequent contracts so that DBE/WBE commitments in that District will reach the required goals. Therefore, in no way are DBE/WBE firms deprived of their right to a specified portion of work in an area. 19/

In all three instances cited in the OIG report, the conclusion drawn by OIG was that IDOT did not verify the accuracy of contractor's statements to support their respective waiver requests.

In the first two cases cited, the contractors submitted the documentation required by the Special Provision and the Good Faith Efforts Guide for Contractors with the exception of contacting IDOT or Supportive Services. During the waiver request review, it was determined, however, that the contractors had contacted all of the DBE/WBE firms in the area to perform any work available on these jobs. The reason for contacting IDOT and supportive services is to suggest what DBE/WBE firms are available to perform work on a particular job. If the contractors had already contacted all the firms willing to work in the respective districts, contacting supportive services and the district would be unnecessary steps in the process. District personnel can go one more step for the contractor. Since Districts set contract goals, the main job of IDOT District personnel is to inform contractors what contract pay items were considered and what DBE/WBE firms were considered available for those items when they set the contract goal. If the contractor has already contacted all such firms for those items of work, IDOT personnel cannot be of much assistance. 20/

IDOT District personnel are contacted by SBE regarding each waiver request to assure that the contractor has in fact considered all of the pay items and DBE/WBE firms which the District had in mind when the contract goal was set. In other words, SBE gets IDOT District personnel concurrence regarding the decision on each waiver request. In the last instance cited, the prime contractor claimed to have received 23 bids from DBE/WBE's (after contacting 149) in which these bids were 20 to 69 percent higher than the lowest bid received from a non-minority firm. The OIG states that IDOT did not verify this claim. 21/

The Department must assume the position that most contractors are honest and all contractors know that when they send in a waiver request that we can, and at times do, check out statements made in their waiver requests. More than random verification would be a burden on the system. 100 percent verification of all contractor statements would be an extreme hardship on staff.

Contractors know that we can check their statements which acts as a deterrent against contractors submitting any false information. As part of Good Faith Efforts, Contractors make certification on the "Certificate of Contact" that the submitted listings of DBE/WBE's (with specific information) are true and accurate.

In conclusion, IDOT is looking for quality in a contractor's effort and not just quantity. The OIG report seems to put much emphasis on contacting IDOT personnel and supportive services (or the lack of such contact) without considering the overall effort made by the contractor in all other aspects of his documentation. If it is determined that his overall efforts to meet the goal seemed reasonable and IDOT cannot offer any suggestion for further effort, a waiver is not denied for the lack of such contact.

IDOT feels that procedures are observed in the vast majority of cases. Since February 1987, procedures were 'fine-tuned' and the Department is confident that decisions are made on solid ground.

Summary

The Illinois Department of Transportation (IDOT) has made a substantial commitment to the Disadvantaged Business Enterprise Program (DBE/WBE) in terms of staff and funds. A survey of other Federal Highway Administration (FHWA) Region V states indicates that our state expenditures for supportive services to DBEs and workforce utilization, including trainees, rank first in comparison ($2.7). The Bureau of Small Business Enterprises (SBE) is also the largest organizational entity among the Region V state assigned responsibility for the DBE Program. The staff for other states range from two people to approximately twenty-two while Illinois has thirty-three staff members. Top management is also committed to making the program successful. This is apparent through continued dialogue with community and affected industry groups throughout the state.

We feel that the Illinois program should be compared with that of other states. In order to provide a more balanced report, we believe it is critical to include some reference with regard to the need to review other state programs for perspective.

IDOT feels it is also important that the Office of Inspector General (OIG) consider the fact that we have detailed written policies and procedures for the administration of this program. You will find that most states do not. This Department's commitment to the DBE program is also evident in the number and quality of educational seminars and conferences provided for Illinois DBE/WBE firms.

In summary we feel that the audit should reflect the level of effort, dedication of resources, quality of communications and the commitment of top management to this program instead of a small random review of the files for documentation.

The Federal Highway Administration's Illinois Division commended IDOT in its 1987 audit of the DBE and Title VI program. Their September 29, 1987 letter with attachments (copy attached) states: "The IDOT is very committed to having a successful DBE program. We found that staff members we dealt with were competent, knowledgeable and hard working. The State's commitment to the DBE program is also borne out by a number of accomplishments which include the recent presentation of 13 DBE seminars around the State by staff, publication of the Small Business Enterprise Policy and Procedures Manual and publication of the D/WBE Contractors Manual. Also, based on comments we received from DBEs we interviewed, the State apparently has an excellent supportive services program. Finally, it is noted that the IDOT uses a substantial amount of State funds to supplement the supportive services funds provided by the Federal Highway Administration.

The IDOT is to be commended for its dedication and commitment to the DBE program."

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DE

U.S. Department of Transportation
Federal Highway Administration

Region 5
Illinois Division

320 West Washington Street, Room 700
Springfield, Illinois 62701

September 29, 1987

HPR-IL

Mr. Al S. Greco, Director
Office of Finance and Administration
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, Illinois 62764

Dear Mr. Greco:

Subject: Disadvantaged Business Enterprise (DBE)
and Title VI Management Review

Enclosed is a copy of the report on the subject review conducted June 16-19, 1987. Our Office, our Regional Office, and our Washington Office participated in this review as well as your Office.

Overall, the review found that the DBE and Title VI programs are being carried out in a highly satisfactory manner. However, there are several findings and recommendations that would enhance the programs even further, as noted in the report.

Please provide us with your comments on these findings and advise us of your intentions regarding implementation of the recommendations.

Sincerely yours,

HRMcLane
H. R. McLane
Planning and Research Engineer

For: Jay W. Miller
Division Administrator

Enclosure

BUREAU OF
SMALL BUSINESS
'87 OCT 1
RECEIVED

FIELD TRIP REPORT
(See instructions on reverse)

AUG 21 1987

TO
Mr. Edward W. Morris, Jr.
Deputy Director, Office of Civil Rights

FROM
Mr. George W. Krynitsky, DBE Officer
Mr. Carl A. Anderson, Equal Opportunity
Specialist

INCLUSIVE DATES
From June 16, 1987 To June 19, 1987

ITINERARY

Washington, DC, to Springfield, Illinois and return to Washington, DC.

PURPOSE

To conduct a review of the Illinois Department of Transportation Disadvantaged Business Enterprise and Title VI programs.

PRINCIPAL CONTACTS

(See Attachment)

ACCOMPLISHMENTS OR RESULTS

(See Attachment)

SUBSEQUENT ACTIONS TAKEN

Appropriate followup action will be taken concerning the findings and recommendations contained in this report.

RECOMMENDATIONS

(See Attachment)

OTHER PERTINENT ITEMS

Form FHWA-107 (Rev. 4-76) PREVIOUS EDITIONS OF THIS FORM MAY BE USED.

General:

During the week of July 15, 1987, Messrs. George Krynitsky and Earl A. Anderson of the Washington Headquarters Civil Rights staff and Mr. Herbert H. Henderson, Region V Civil Rights Director, conducted a review of the Illinois Department of Transportation (IDOT) Disadvantaged Business Enterprise (DBE) and Title VI programs. The reviews covered IDOT's program operations as well as the division office's. Overall, it was found that the DBE and Title VI programs are being carried out in a highly satisfactory manner and both the State and Division office personnel are commended for their efforts. Our review did, however, result in several findings and recommendations which would further enhance both the DBE and Title VI programs in Illinois.

Principal Contacts:

The key division office and IDOT personnel who were involved in this review are as follows:

Illinois Division Office

Name	Position
Mr. Jay W. Miller	Division Administrator
Mr. H. Richards McLane	Planning and Research Engineer
Mr. Thomas A. Barton	Assistant Planning and Research Engineer

Illinois Department of Transportation

Director's Office

Mr. Rowan Woolfolk	Special Assistant to the Director of Finance and Administration

Bureau of Small Business Enterprise

Mr. Joseph Yi	Chief, Bureau of Small Business Enterprise
Mr. Glenn Harper	Manager, Administration Section
Mr. John Beard	Manager, Policy and Program Support Section
Ms. Brenda Sue Page	Manager, DBE Certification Section
Mr. Donald W. Lamb	Manager, EEO and DBE Contract Compliance Section

Name	Position
Ms. Suzette Barrows	Manager, Supportive Services Unit
Ms. Carol Lyle	Staff Member, Policy and Procedures Unit

Bureau of Personnel Management

Mr. Don Williams	Manager, Civil Rights Section
Mr. Terry Ransom	Title VI Specialist

DISADVANTAGED BUSINESS ENTERPRISE

The following findings and recommendations were developed during the course of the review. All parties agreed that the findings were valid and that the recommendations would be implemented in a timely manner.

Finding:

There is a pressing need to increase the number of verification reviews being conducted on applicants for DBE certification. During the past year, less than 10 percent of the applicants had verification reviews conducted on their firms. Moreover, a large proportion of the certified firms never had an on-site review made at their places of business. It is acknowledged that the State is performing a number of on-site project reviews which are conducted by the Central Office Contract Compliance Section and the State District Equal Opportunity Officers. The concern is in regard to the verification reviews to be conducted as part of the certification process.

Recommendation:

All new DBE applicants should have an on-site review performed at the firms' places of business prior to IDOT rendering certification decisions. Also, all of the active certified DBE firms which have not been reviewed at their place of business should be reviewed in as timely a manner as possible. Priority should be given to on-site place-of-business verification reviews of active firms so that the most active firms (in terms of contract dollar values and number of contracts received) are reviewed first. State officials indicated the reviews of the active firms could be completed in about 1 year.

Finding:

Letters to applicants who are denied certification indicate that they can appeal IDOT's denial decisions to the United States Department of Transportation with no further information as to where or to whom the appeals should be sent.

Recommendation:

Letters to applicants that have been denied certification should include the name and address of the individual in the Department to be contacted in appealing State certification denial decisions.

Finding:

There is no up-front check made of the ownership or lease status of DBE equipment. A payback statement is completed by the prime contractor at the end of the job; however, an early determination of DBE equipment ownership or rental status should be made at the project level.

Recommendation:

Responsible project personnel should determine the ownership or rental status of equipment to be used by DBE's on the project and include appropriate documentation in the project file. It is acknowledged that there may be occasions when a DBE could legitimately use a prime contractor's equipment without a lease agreement, but such situations should occur infrequently.

Finding:

The IDOT is very committed to having a successful DBE program. We found that the staff members we dealt with were competent, knowledgeable and hard working. The State's commitment to the DBE program is also borne out by a number of accomplishments which include the recent presentation of 13 DBE seminars around the State by the staff, publication of the Small Business Enterprise Policy and Procedures Manual, and publication of the D/WBE contractors manual. Also, based on comments we received from DBE's we interviewed, the State apparently has an excellent supportive services program. Finally, it is noted that the IDOT uses a substantial amount of State funds to supplement the supportive services funds provided by the Federal Highway Administration.

Recommendation:

~~None.~~ The IDOT is commended for its dedication and commitment to the DBE program.

TITLE VI

This review was conducted using as a guideline FHRPM 2-1-2 Title VI Program and Related Statues Implementation and Reveiw Precedures, parargraphs 7.A. State Highway Agency Responsibilities and 7.B. State Actions.

Finding:

The organizational location of the Title VI Specialist is in the Civil Rights Section of the Bureau of Personnel Management, which is in the Office of Finance Administration. The Title VI Specialist reports to the agency civil rights officer, who is under the direction of the Bureau Chief of Perrsonnel Management. Title VI Program Area Designees nave been assigned to work with the Title VI Specialist in each of the program areas. The Program Area Designees are responsible for their individual program area's Title VI compliance.

Recommendation:

None.

Finding:

The State's Title VI Plan indicates that Title VI Program Area Designees have been assigned to work with the Title VI Coordinator in each program area. Our review indicated that the Coordinator has not been providing the technical Assistance needed by designees which would enable them to become fully aware of Title VI concerns in their respective program areas.

Recommendation:

To schedule periodic meetings with Designees and discuss the involvement of Title VI in current program area activities in their districts.

Finding:

One of the State Title VI Coordinator's responsibilities is to conduct training programs on Title VI and related VI and related statues for Department program officials. As of the date of this review, the Coordinator has not conducted any Titile VI training. However, Mr. Don Williams, Civil Rights State Program Manager, stated that he is in the final stages of putting together a training program that would cover all aspects of civil rights for State managers and program area personnel.

Recommendation:

Complete work on putting the training program together and begin Title VI training.

Finding:

In the State Title VI Plan, the Title VI Coordinator is responsible for reviewing and monitoring the program. The Coordinator has been unable to monitor program area activities or conduct any reviews of recipients receiving Federal financial assistance.

Recommendation:

The Coordinator should prepare a schedule of reviews of recipients to be submitted to the Division Office with a copy to the Regional Civil Rights Office.

Finding:

The Coordinator has been involved in various stages of project development, through the environmental process, by assisting program area designees with Title VI concerns.

Recommendation:

None.

Summary:

The reviewers would like to extend their appreciation to Mr. Jay Miller, his staff, and the staff of the Illinois Department of Transportation for their cooperation during the review.

(5 pages)

Audit Response to IDOT Management Comments

Comments provided by IDOT, and included as an attachment to FHWA's response to the draft report, are addressed in this Appendix.

It should be noted that throughout this audit, at its conclusion, and even after the issuance of the draft report, we continually sought IDOT's position regarding our audit conclusions and the validity of our examples. These efforts included:

- Bringing apparent discrepancies to the attention of IDOT staff as they were noted during the course of our review.

- Furnishing IDOT personnel, in February 1988, with detailed written comments concerning our tentative audit conclusions and the examples we were planning to use to support our findings. At this time, we asked for written comments concerning our audit observations. In response to this request IDOT staff advised us, in writing, that they agreed with our observations.

- Meeting with IDOT personnel after the issuance of the draft report to further discuss IDOT's position on our audit conclusions and to review additional documentation which IDOT contended supported their certification actions.

Our detailed responses keyed to the IDOT reply on Appendix B follow.

1/ Of the 13 inadequately documented eligibility factors identified in Exhibit A, documentation specifically referred to by IDOT's certification procedures was not obtained in 7 instances. In the remaining 6 instances, the basis for IDOT's decision was not properly supported.

2/ As stated in the Scope section of our report, our review placed primary emphasis on certification actions taken since IDOT formalized their procedures in February 1987. The Bureau Chief of IDOT's Small Business Enterprise Unit, the person designated as IDOT's representative on D/WBE matters, had assured us that the 1987 action simply formalized what had been standard practice throughout our audit period. Consequently, the basis for eligibility decisions (i.e. extent of documentation required), should have been consistent whether these decisions were made before or after the February 1987 formalization of IDOT's certification procedures. Therefore, we believe that the procedures and criteria used to review firms' eligibility during our audit period have been properly identified.

3/ We held IDOT's certification reviews to a rigorous standard because the integrity and credibility of the D/WBE program are heavily dependent on the fact and perception that eligibility is being verified in an objective and consistent manner. Unless information is obtained during the certification process which clearly demonstrates that a firm is eligible to participate in this program, neither the Federal government, IDOT, nor the D/WBE community has assurance that this program is functioning as intended.

4/ The information to which IDOT is apparently referring is a 1983 "memo to file" in which the head of the DBE program notes that the contractor was provided assistance by a supportive services consultant. Apparently IDOT assumes that the supportive services consultant verified ethnicity before providing assistance. In addition, IDOT noted that they have had ongoing contact with the contractor since he was certified.

In this case, we found no evidence that ethnicity was verified before certification was granted. Moreover, any contacts which IDOT may have had with the contractor subsequent to certification are irrelevant to an assessment of whether ethnicity was properly determined at the time the application was submitted.

5/ This firm was certified to perform a wide variety of work items, including excavation, grading and miscellaneous concrete. IDOT should have performed an on-site review to determine how the individual intended to obtain equipment without substantial capital or other evidence of financial capability.

Furthermore, although the individual may have received only small jobs since he was certified, the size of prospective jobs is not an eligibility factor, and in any case was unknown at the time the application was reviewed.

6/ We agree that a loan agreement exists, and we thoroughly reviewed it. Based on our review, however, we do not agree that it substantiates a contribution of capital to the corporation by Mrs. D. While the corporation has been 100 percent owned by Mrs. D since 1983, the 1983 loan agreement was secured by both Mr. and Mrs. D's signature. Accordingly, the loan agreement does not document that Mrs. D contributed $100,000 to the firm. This is particularly important since Mrs. D was applying for a WBE certification, and therefore must demonstrate a real and substantial investment in her own right.

7/ IDOT certification procedures clearly state that "copies of stock certificates, signed on both sides and documentation to substantiate stock purchases must be submitted" (underlining added). We found no procedure describing IDOT's supposed practice of waiving the above documentation requirements. Moreover, the files for some of the firms we reviewed evidenced submission of copies of cancelled checks even where they had been formed more than one year before applying for certification. Accordingly, IDOT's actions related to this contractor are in conflict with its own procedures as well as information contained in other certification files.

8/ While the firm may well be performing in a satisfactory manner, we found no evidence that Ms. L contributed any of the capital for the firm. Moreover, since a firm's performance on contracts is not an eligibility factor, IDOT cannot reasonably rely on this rationale to waive the requirement to verify that capital contributions were both real and substantial.

9/ We found no evidence of such documentation during our review, and IDOT failed to provide additional information during meetings we held in February and May to ensure that all pertinent file documentation had been reviewed.

10/ We were not questioning the existence of these titles. We were unable to find documentation supporting the alleged contribution of cash. We found no evidence that this firm was formed in 1971. Rather, the documentation showed that the firm was established in 1983.

11/ We were not questioning the existence of these titles. Rather, we were unable to find documentation supporting Mr. P's supposed contribution of $3,000 in cash or $40,000 in real estate.

12/ The file lacks documentation which supports the contribution of capital to this firm, or an explanation of why such documentation is not needed.

13/ We did not observe this letter in the certification file at the time of our review. Moreover, during meetings which we held with IDOT personnel in February and May to ensure that all pertinent file information had been reviewed, IDOT failed to provide us with a copy of this letter. In any case, IDOT procedures require submission of owner/applicant resumes and a listing of experience including job histories. A testimonial letter, by itself, does not adequately document expertise as required by IDOT procedures.

14/ Although the ability of illiterate individuals (as well as individuals with substandard literacy skills) to direct a firm's operations may vary, in this instance we do not believe that IDOT had an adequate basis for concluding that the individual could effectively manage and control his firm's operations. It should be noted that, in a report dated May 5, 1987 an IDOT certification analyst concluded that the individual was unable to control, direct, or cause the direction of either day-to-day operations or management policies. This report also noted that the firm's resources were "limited", and correspondence prepared by an IDOT field analyst expressed concerns about the individual's use of equipment and supplies provided by a prime contractor.

Based on this data, we maintain that both the control and independence eligibility factors were inadequately documented.

15/ We agree that Mrs. S holds the key positions of President and Chairman of the Board, but do not agree that "it is apparent" that she is managing day-to-day operations and addressing issues of management policy. Mrs. S's children appear to be carrying out most managerial responsibilities, as they fill the following positions: Vice President of Accounting, Vice President of Maintenance and Safety, Vice President of Operations, and Secretary/Treasurer. In addition, each of these individuals earns substantially more than Mrs. S.

16/ We have previously discussed this matter with IDOT representatives and revised our draft report to address their concerns. These proposed revisions were furnished to IDOT on May 19, 1988 and are reflected in the final report.

17/ The proposed corrective actions for improving placement reporting are consistent with the intent of the audit recommendations.

18/ IDOT has not correctly interpreted the intent of Federal regulations. As stated in 23 CFR, the goal of the program is to increase the participation of minority groups and women in all phases of the construction industry by providing training opportunities. IDOT has improperly allowed its supportive services contractors to place individuals, including journeymen, who have extensive experience in their trade. One contractor, for example, included 25 journeymen in a total of 84 individuals reported as "placed". Another contractor included 110 journeymen on a list of 621 individuals shown on its quarterly placement report. We do not believe this represents only occasional placement of experienced minorities in construction training slots.

19/ We discussed this matter with IDOT representatives and revised our draft report to address their concerns. These proposed revisions were furnished to IDOT on May 19, 1988 and are reflected in the final report.

20/ Our review disclosed no evidence that, in the two instances cited, contractors had contacted all available D/WBE firms in the area. In fact, the analyst reviewing one waiver request noted that the documentation was weak and that follow up efforts by the contractor could not be determined. In the other example, the file did not contain sufficient information to determine how many firms had actually been contacted. In spite of these documentation deficiencies, we found no evidence that IDOT followed up to resolve these concerns.

21/ Although IDOT assumes that most contractors are "honest", prior audit reports have shown that contractors sometimes misrepresent their disadvantaged status and/or compliance with pertinent requirements. Moreover, IDOT's procedures do not include a provision for verification of such contractor statements, and we found no evidence that IDOT does verify these statements on a routine basis.

AUG 0 8 1988

CCC of Evansville Inc.

CCC OF EVANSVILLE, INC.
3100 Broadway - P.O. Box 7055
Evansville, IN 47712-0755

(812) 423-4352

General Contractors
Highway • Industrial
Commercial

July 29, 1988

Congressman Ike Skelton
United States House of Representatives
2453 Rayburn Office Building
Washington, D.C. 20515

Dear Congressman Skelton:

Since the early 1970's, various special preference programs designed to counteract the effects of discrimination and make financial resources available to minority and women owned businesses have been implemented by Congress. Although these progrmas affect every aspect of Federal Government procurement, the highway construction industry has felt the greatest impact. As you know, the need for and the effectiveness of these programs has always been hotly debated by legislators, contractors, and minority groups. The most recent controversy involves the Disadvantaged Business Enterprise section of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

Prior to this act, a mandatory 10% subcontracting requirement for minority owned and controlled businesses and a 3.2% administrative (voluntary) goal for women owned and controlled business existed. The 1987 act recognized the discrimination and hardship that women face in the traditionally male construction industry by revising the federal defination of a Disadvantaged Business Enterprise to include women owned businesses. This change has been beneficial to all parties concerned.

From the beginning, the Associated General Contractors of America has fought against preferential procurement. In their attempt to remove this legislation, AGC of America has mounted one of the largest lobying efforts ever to hit Capitol Hill, funded numerous court cases, and have even argued before

An Equal Opportunity Employer

The United States Supreme Court. One of the Prime Contractor's main contentions is that they often have difficulty fullfilling the DBE requirements. This problem has been lessened by the combined goal. It is very difficult for Primes to put their bid together and maintain a specific percentage subcontracted to DBE's and a specific percentage subcontracted to WBE's. Many of these firms bid the same items. A composite goal allows flexibility. The Prime can become concerned with a total goal and be able to sub a total item in lieu of portions to maintain the separate percentages.

DBE's bidding as prime contractors are not pressed, under the persent regulations, to sub portions of these projects to WBE's unless it is advantageous to them. This advent has encouraged minority owned companies to bid as prime contractors. Women's Business Enterprises are substantially better off under the combined goals. In this particular industry, women truely experience discrimination. Any man, regardless of his race or creed, is far more readily accepted on a construction site than a woman. Combined goals allow WBE's to compete for a larger "piece of the pie". Many firms are isolated--They are the only DBE or WBE in their region. In the past, due to Prime's difficulty with compliance, goals for either DBE's or WBE's were seldom set on projects occuring in these regions. Many were unable to bid competively when they included the travel expenses. The combined goal allows an even distribution over regions and the Primes are still able to comply. Opponents of the combined goal program contend that the benefits that women have gained have come at the expense of ethnic minorities. The enclosed data and graph clearly demonstrates that under the combined goal system, women firms are not encroaching on minority firms.

The Department of Transportation has also realized benefits from combined goals. Because more firms are quoting on the same projects, Prime contractors can be more selective in the quotes they use and avoid using escalated minority bids. This cost savings results in additional funds available for needed projects. Goal setting is an easier task. The program has become much stronger. With less effort expended in these areas, resources can be directed to assisting new companies and investigating fraudulent firms. Most states have found that it is easier to meet the federally mandated goals under the new guidelines.

The true success of preferential procurement will come when the programs can be abolished because minority and women owned firms are obtaining their "fair share" as prime contractors in the construction industry. Although progress has been made, continuation of the program for a longer period of time is needed to obtain this objective. This one goal system is achieving what it was enacted to do--Give it a chance to perform the task successfully.

Illinois Congressman Gus Savage, due to an isolated incident, is now advocating a return to the previous separate goal system-a mistake that will damage many minority and women owned firms. I urge you not to support this measure. If Congress wants to truely assist these disadvantaged contractors, I recommend that the mandatory 10% be raised to 15%, or at least to the previous 13.2%. Many city and state programs have been successful at higher rates. The combined goal should also be mandated for airport, military and all federally funded work.

Sincerely,

Donna G. Cook

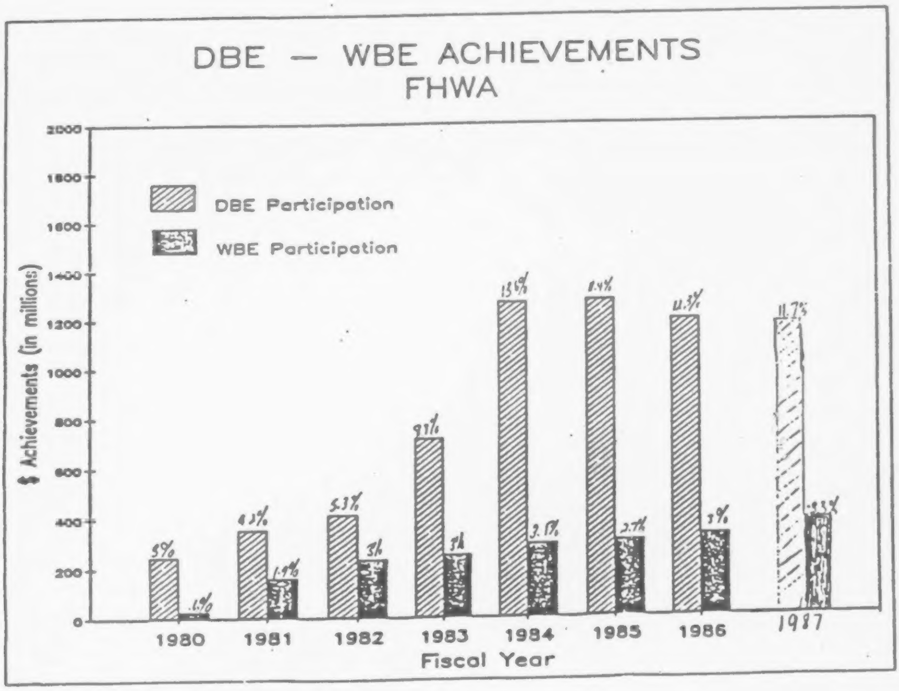
Donna G. Cook, President
CCC of Evansville, Inc.

DC:bc
enclosure

Indiana Department of Highways
Federal Dollar Spending -- Fiscal Year 1988
Combined DBE Program

Construction Contracts	$137,564,731.00
MBE Sub-contracts	$13,209,918.00
WBE Sub-contracts	$4,011,836.00

Note: Information provided is for subcontracts only as Indiana does not maintain a minority or women owned business set-aside program for prime contracts.



Chicago Chapter

COALITION OF BLACK TRADE UNIONISTS

4859 SOUTH WABASH
CHICAGO, ILLINOIS 60615
(312) 285-0084

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HAROLD ROGERS
CCCTU L 1600 AFT AFL CIO

TESTIMONY OF

CHICAGO CHAPTER OF THE COALITION OF BLACK TRADE UNIONISTS

BEFORE

THE SUBCOMMITTEE ON PROCUREMENT, INNOVATION
AND MINORITY ENTERPRISE

OF

THE SMALL BUSINESS COMMITTEE

OF

THE U.S. HOUSE OF REPRESENTATIVES

DIRKSEN FEDERAL BUILDING
219 SOUTH DEARBORN
CHICAGO, ILLINOIS

AUGUST 8, 1988

MR. CHAIRMAN, ON BEHALF OF THE CHICAGO CHAPTER OF THE COALITION OF BLACK TRADE UNIONISTS (CBTU), I THANK THE SMALL BUSINESS COMMITTEE AND THIS SUBCOMMITTEE FOR THE PRIVILEGE AND OPPORTUNITY TO PROVIDE TESTIMONY ON BARRIERS TO CONTRACTING FACING SMALL DISADVANTAGED BUSINESS ENTERPRISES HERE IN ILLINOIS AND ON A NATIONAL SCALE.

BEFORE BEGINNING THE SUBSTANTIVE PORTION OF TESTIMONY, I WOULD PROVIDE SOME PERTINENT BACKGROUND INFORMATION ON MY ORGANIZATION.

THE COALITION OF BLACK TRADE UNIONISTS WAS FOUNDED IN 1972 FOR PURPOSES OF ACHIEVING ECONOMIC, POLITICAL AND SOCIAL JUSTICE BY MAXIMIZING BLACK PARTICIPATION IN LEADERSHIP POSITIONS IN THE LABOR MOVEMENT AND THROUGH ACTIVE INVOLVEMENT IN PROGRAMS DESIGNED TO IMPROVE EMPLOYMENT OPPORTUNITIES, AS WELL AS CONDITIONS OF EMPLOYMENT, FOR MINORITY AND POOR WORKERS.

TODAY, THE CHICAGO CHAPTER OF CBTU HAS GROWN AND EXPANDED AND IS NOW COMPOSED OF REPRESENTATIVES FROM MORE THAN 40 NATIONAL AND INTERNATIONAL UNIONS. OUR OBJECTIVES ARE REFLECTED IN ACTIVITIES AND PROJECTS WHICH INCLUDE: WORK WITHIN THE FRAMEWORK OF THE TRADE UNION MOVEMENT TO PROVIDE A VOICE AND AVENUE FOR GREATER BLACK AND MINORITY PARTICIPATION IN LEADERSHIP AS WELL AS RANK-AND-FILE; CONDUCTING VOTER REGISTRATION AND EDUCATION DRIVES; CAMPAIGNS FOR ORGANIZING THE UNORGANIZED; AND ACTIVE SUPPORT FOR CIVIL RIGHTS LEGISLATION AND PUBLIC POLICIES DESIGNED TO END DISCRIMINATION IN ALL FORMS.

IN SUMMARY, CBTU IS AN ADVOCATE FOR THE UNINHIBITED PARTICIPATION OF MEMBERS OF THE MINORITY COMMUNITY IN THE SOCIAL, CULTURAL, POLITICAL, ECONOMIC, AND COMMERCIAL LIFE OF SOCIETY.

THIS HEARING, WHICH WAS PROMPTED BY THE EXCLUSION OF MBES FROM THE DAN RYAN EXPRESSWAY REPAIR PROJECT, IS CRITICAL BECAUSE IT RAISES CRUCIAL ISSUES. THESE ARE ISSUES WHICH QUESTION OUR NATION'S WILLINGNESS TO KEEP PROMISES MEMORIALIZED IN ITS CONSTITUTION, REINFORCED BY CIVIL RIGHTS LAWS AND VALIDATED IN NUMEROUS COURT DECISIONS. THESE ARE ISSUES WHICH CERTAINLY RAISE THE SPECTRE OF A BACKWARD LEAP INTO A TIME OF RACISM AND DISCRIMINATION UNFETTERED BY EITHER MORAL PRINCIPLES, LEGISLATIVE PROHIBITIONS OR JUDICIAL PRECEDENT. THESE ARE CONCERNS, MR. CHAIRMAN, WHICH WOULD BEGIN TO SHAPE A RESOLUTION OF WHETHER AMERICA INTENDS TO RETREAT TO THE DARK AGES OR MARCH INTO THE NEXT CENTURY FREE OF THE STIGMA OF BEING HYPOCRITICAL BECAUSE OF THE TREATMENT OF ITS MINORITY GROUP CITIZENS.

THROUGHOUT THE TENURE OF OUR PRESENT NATIONAL ADMINISTRATION WE HAVE WITNESSED DEVIATION AFTER DEVIATION FROM OUR NATION'S DECLARED POLICY OF ENDING DISCRIMINATION AND PROMOTING AFFIRMATIVE ACTION IN ORDER TO CORRECT THE HISTORIC DISABILITIES IMPOSED UPON BLACKS AND OTHER MINORITIES.

THE END RESULT OF FAILURE TO EFFECTIVELY ENFORCE THE LAWS AGAINST DISCRIMINATION WHETHER IN HOUSING, EDUCATION, EMPLOYMENT, AND PROCUREMENT, HAS CREATED A SENSE OF REVERSAL AND ABANDONMENT IN MINORITY COMMUNITIES, CONFIRMED BY ALL MAJOR SOCIO-ECONOMIC INDICATORS.

THERE ARE GROWING DIFFERENTIALS IN BLACK AND WHITE MEDIAN INCOMES. BLACK YOUTH UNEMPLOYMENT HAS BEEN IN DOUBLE-DIGITS IN SPITE OF CLAIMS OF ECONOMIC RECOVERY. BLACK BUSINESS FAILURES SURPASS FORMATION RATES. PLANT CLOSINGS AND RELOCATIONS ARE FURTHER DISTRESSING ALREADY IMPOVERISHED COMMUNITIES. INCREASED NUMBERS OF FORECLOSURES ARE OCCURRING BECAUSE HOMEOWNERS ARE UNABLE TO MAKE MORTGAGE PAYMENTS FOR LACK OF INCOMES. THIS STEADY DECLINE IN THE STANDARD OF LIVING AND QUALITY OF LIFE FOR INDIVIDUALS AND FAMILIES IN MINORITY COMMUNITIES REQUIRES CONGRESSIONAL ATTENTION. A GOOD PLACE TO BEGIN IS WITH THE MINORITY BUSINESS COMMUNITY.

LIKE MOST SMALL FIRMS, MINORITY BUSINESSES ARE UNDERCAPITALIZED. THOSE IN THE SERVICE SECTOR ARE PARTICULARLY HANDICAPPED BECAUSE THEY ARE UNABLE TO POST THE LARGE BUILDINGS AND HEAVY EQUIPMENT LENDING INSTITUTIONS REQUIRE AS COLLATERAL.

MINORITY BUSINESSES MUST ALSO CONTEND WITH THE RACIST NOTION PREVALENT IN THE LENDING INDUSTRY THAT THEY ARE A GREATER RISK BECAUSE THEY ARE MORE LIKELY TO DEFAULT ON LOAN OBLIGATIONS. THESE CAPITALIZATION PROBLEMS MUST BE SOLVED BY CONCRETE CONGRESSMAN ACTION.

MINORITY BUSINESSES NEED SKILLED MANAGERS AND A WORKFORCE THAT CAN READ, WRITE, AND PERFORM ON-THE-JOB. THIS PRESENTS THE NEED TO ELIMINATE THE DEFICIENCIES IN OUR PUBLIC SCHOOL SYSTEM AND ADEQUATE FUNDING FOR EDUCATION.

MINORITY BUSINESSES NEED BROADER MARKETS. TOO OFTEN, THEY ARE CONFINED TO MINORITY MARKETS, NOT BECAUSE THEY OFFER INFERIOR PRODUCTS OR SERVICES BUT BECAUSE OF EXCLUSION FROM OTHER MARKET OPPORTUNITIES ON ACCOUNT OF RACISM. THIS IS TRUE IN THE PRIVATE AS WELL AS THE GOVERNMENT SECTOR, AS ILLUSTRATED BY THE STATE OF ILLINOIS' PRACTICE ON THE DAN RYAN PROJECT.

THE DAN RYAN EXPRESSWAY REPAIR PROJECT IS A CASE OF CLEAR VULGARIZATION OF CONGRESSIONAL INTENT IN ORDER TO DILUTE AND MAKE A MOCKERY OUT OF THE 10% SET-ASIDE REQUIREMENT.

STATE OFFICIALS, FROM THE GOVERNOR OF ILLINOIS TO THE ILLINOIS DEPARTMENT OF TRANSPORTATION (IDOT), HAVE DECIDED ON THE BASIS OF POLITICAL EXPENDIENCY THAT IT IS TACTICALLY SAFE TO DISCRIMINATE AGAINST MBEs IN FAVOR OF WHITE FEMALE BUSINESSES. THE EFFECT OF THE STATE'S ACTION ON THE DAN RYAN WAS TO ENLARGE THE PORTION OF DOLLARS AND CONTRACTS FLOWING INTO THE WHITE COMMUNITY.

IT IS INEQUITABLE TO SET-ASIDE 90% FOR WHITE MALES AND THEN REQUIRE WHITE FEMALE OWNED BUSINESSES TO SHARE IN THE 10% SET-ASIDE FOR BLACKS, HISPANICS, NATIVE AMERICAN INDIANS, ASIAN AND PACIFIC ISLANDERS, ALASKA NATIVES, AND OTHERS DESIGNATED AS SMALL DISADVANTAGED BUSINESSES.

WHEN THE 1987 AMENDMENT TO THE SURFACE TRANSPORTATION UNIFORM RELOCATION ASSISTANCE ACT (STURRAA) INCLUDED WBEs AS A PRESUMPTIVE MEMBER OF THE DBE CLASS, CONGRESS CREATED THE CONDITIONS FOR DESTROYING THE ONLY REMEDY WHICH CAN CORRECT INEQUITIES. SOME MEMBERS OF CONGRESS GENUINELY BELIEVED THAT THE ALTERATION OF THE LANGUAGE OF THE LAW DID NOT EXTINGUISH ITS SPIRIT AND THAT STATES WOULD FAIRLY ADMINISTER THE 10% SET-ASIDE FOR HIGHWAY CONSTRUCTION PROJECTS USING FEDERAL FUNDS.

THE STATE OF ILLINOIS CHOSE TO ACT IN BAD FAITH. STATE OFFICIALS, THROUGHOUT THEIR NEGOTIATIONS WITH DRIVE COALITION AND EVEN TODAY, MAINTAIN THAT A WAIVER IS NEEDED FROM THE U.S. SECRETARY OF TRANSPORTATION IN ORDER TO INCREASE THE MBE SHARE ON THE DAN RYAN PROJECT. THIS DEFIES COMMON SENSE IN LIGHT OF THE FACT THAT NO WAIVER WAS REQUIRED IN ORDER TO GIVE WHITE FEMALE BUSINESSES THE LION'S SHARE OF CONTRACTS.

THIS ARGUMENT CAN ONLY BE SUSTAINED IF CONGRESS INTENDED TO GIVE WHITE FEMAILE BUSINESSES PREFRENTIAL TREATMENT AS A MEMBER OF THE DBE CLASS. THIS IS NOT SUBSTANTIATED BY THE LEGILSATIVE LANGUAGE OR RECORD ON THE 1987 STURRA AMENDMENT.

AGAIN, WE SEE THE SAME TRANSPARENCY IN THE STATE'S ARGUMENT THAT MBE EXCLUSION FROM THE DAN RYAN WAS CAUSED BY A ONE-GOAL SYSTEM. AS FAR AS WE ARE AWARE, CONGRESS ONLY CREATED ONE CLASS FROM THE ORIGIN OF THE LAW -- THE CLASS OF SMALL BUSINESSES OWNED AND CONTROLLED BY INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS, AND ONLY ONE-GOAL, A MINIMUM OF 10%.

THUS, THE STATE'S ARGUMENT IS ADVANCED TO SERVE AS A JUSTIFICATION FOR SYSTEMIC DISCRIMINATION AGAINST NON-WHITE ENTREPRENEURS. ONE MERELY HAS TO TRACE THE STATE'S PERFORMANCE BEFORE THE 1987 STURRA AMENDMENT TO CONCLUDE THAT ILLINOIS, NO MATTER WHAT ITS INTERPRETATION OF THE LAW, HAS NOT LIVED UP TO FEDERAL OR EVEN ITS OWN STATE LAW IN INCLUDING MBEs IN PROCURMENT ACTIVITIES.

YOU HAVE HEARD IN EARLIER TESTIMONY OF THE SPECIFIC BURDENS UPON MBEs IMPOSED THROUGH PROHIBITIVE PRE-QUALIFICATION REQUIREMENTS AND OPPRESSIVE ADMINISTRATIVE REGULATIONS. THERE IS ALSO A DE FACTO SYSTEM -- A NETWORK OF NARROW INTERESTS, WELL-ENDOWED WITH FINAICIAL RESOURCES AND INFLUENCE AND THE SINGULAR PURPOSE OF IMPEDING, IF NOT DESTROYING, AFFIRMATIVE ACTION, SET-ASIDES AND ALL PROGRAMS FOR FULLY INTEGRATING MBEs IN THE ECONOMIC, FINANCIAL AND COMMERCIAL LIFE OF ILLINOIS

WITHOUT CONGRESSIONAL INTERVENTION, MINORITY BUSINESSES ARE AN ENDANGERED SPECIES IN AN ERA OF MEGA MERGERS AND ACQUISITIONS, THE GREATER CONTROL OF MARKET SHARE BY MASSIVE CONGLOMERATES AND TRANSNATIONAL CORPORATIONS, AND THE NEW WAVE OF VIRULENT RACISM.

MINORITY BUSINESSES ARE SMALL DISADVANTAGED BUSINESSES, FAR FROM MAKING THE FORTUNE 500 LIST. NEVERTHELESS, THEY ARE GIANTS IN THEIR OWN COMMUNITIES PROVIDING JOBS, GOODS, SERVICES, A DEGREE OF ECONOMIC STABILITY AND AN IMPORTANT SENSE OF PRIDE AND INSPIRATION TO THESE COMMUNITIES

BROAD PROGRAM GOALS AND DEFINITION OF NATIONAL NEEDS AND POLICIES COME, AS THEY SHOULD, FROM CONGRESS. TO SHIFT THESE RESPONSIBILITIES TO THE STATES WOULD NOT BE SOUND THINKING ON THE PART OF CONGRESS.

FOR THESE REASONS, THE CHICAGO COALITION OF BLACK TRADE UNIONISTS OFFERS THE FOLLOWING RECOMMENDATIONS FOR CONSIDERING MORE FORCEFUL AND EFFECTIVE MEASURES AS A FRAMEWORK FOR REMOVING THE CURRENT BARRIERS TO MINORITY BUSINESS PARTICIPATION IN THE NATIONAL ECONOMY:

(1) CONGRESS MUST USE ITS AWESOME POWER TO TAX AND APPROPRIATE FUNDS TO FURTHER BROAD SOCIETAL OBJECTIVES. THE PRIVILEGE OF USING PUBLIC FUNDS MUST BE EXTENDED ONLY TO PUBLIC AND PRIVATE INSTITUTIONS WHICH ARE NOT ONLY FORMALLY PLEDGED TO A POLICY OF NON-DISCRIMINATION, BUT ARE CONSTANTLY MONITORED TO ENSURE THAT THEY ARE IN PRACTICE FULFILLING THE GOAL OF EQUALITY OF OPPORTUNITY.

(2) CONGRESS MUST IMPOSE A CONDITION OF PRIOR REVIEW UPON STATES APPLYING FOR FEDERAL FUNDS TO ENSURE THAT SUCH FUNDS WOULD BE APPLIED IN A NON-DISCRIMINATORY MANNER AND TO FURTHER NON-DISCRIMINATORY ENDS. STATES SHOULD BE MADE TO DEVELOP PLANS FOR SPENDING FEDERAL DOLLARS WITH INPUT FROM COMMUNITY-BASED ORGANIZATIONS, LABOR, EDUCATIONAL INSTITUTIONS, AND LOCAL GOVERNMENTAL UNITS. DETAILS SHOULD BE REQUIRED THAT WOULD INCLUDE A STATEMENT OF ECONOMIC IMPACT,

TRAINING OPPORTUNITIES, JOBS TO BE PROVIDED, UTILIZATION OF MINORITY BUSINESSES AND LABOR FORCE, AND SUCH OTHER INFORMATION AS WOULD ASSURE CONGRESS THAT THERE WOULD BE A NON-DISCRIMINATORY USE OF FEDERAL FUNDS. NO FUNDS SHOULD BE AWARDED WITHOUT A SIGN-OFF BY ALL OF THE PARTIES, BOTH PUBLIC AND PRIVATE AS DESCRIBED ABOVE.

(3) CONGRESS MUST CONSIDER WHETHER IT HAS THE POWER TO NULLIFY THE CHARTER OF ANY BUSINESS ASSOCIATION, THEREBY WITHDRAWING THE PRIVILEGE OF DOING BUSINESS, ONCE THERE IS EVIDENCE OF CONTINUING VIOLATIONS OF THE LAWS AGAINST DISCRIMINATION. THE SAME SHOULD BE TRUE FOR OTHER INSTITUTIONS WHICH ENGAGE IN DISCRIMINATION, CONTRARY TO PUBLIC POLICY AND LAWS.

(4) A STATE BY STATE REVIEW OF PROCUREMENT PROGRAMS MUST BE UNDERTAKEN BY CONGRESS FOR PURPORES OF ELIMINATING ALL BARRIERS TO MINORITY BUSINESS PARTICIPATION THROUGH NATIONAL LEGISLATION.

MR. CHAIRMAN, WE CONCLUDE BY STATING THAT SMALL BUSINESSES HAVE A VITAL ROLE TO PLAY IN BETTERING THE QUALITY OF LIFE FOR ALL CITIZENS. STRENGTHENING THEIR ABILITY TO BE VIABLE AND PRODUCTIVE REQUIRES THAT CONGRESS TAKES IMMEDIATE CORRECTIVE ACTION BASED UPON A NEW OUTLOOK ON THE PROBLEM OF HISTORIC AND CONTINUING INEQUITIES IN OUR SOCIETY.

FAIRNESS AND ECONOMIC JUSTICE FOR MINORITY BUSINESSES WOULD ONLY BE ACHIEVED WHEN CONGRESS ACTS DECISIVELY TO REMOVE THE VESTIGES AND EFFECTS OF RACE-BASED DISCRIMINATION FROM ALL FACETS OF OUR SOCIETY.

THANK YOU.

THE
HEARTLAND
INSTITUTE

The Heartland Institute
59 East Van Buren, Suite 810
Chicago, Illinois 60605
312/427-3060

NEWS MEMO

To: News media

From: Gary Miller

Re: News event and interview opportunity concerning testimony on Illinois Department of Transportation (IDOT) minority set-aside (quota) program. Event coincides with a Congressional hearing on the program attended by five U.S. Congressmen, Mayor Sawyer, and others.

Time & Date: 9:00 a.m. to 11:00 a.m., Monday, August 8, 1988

Location: Federal Building, 219 South Dearborn, Ceremonial Courtroom (#2525). Interviews will take place outside room.

Why: Charges of widespread corruption and wasted public funds have been made against IDOT's minority set-aside program. Minority firms blame nonminority prime contractors for the program's failure, and prime contractors blame unqualified minority subcontractors and provisions of the law. Nonminority companies were not invited to testify at this hearing, and in fact were denied the opportunity when they requested it. Representatives of nonminority companies will bring their testimony to the hearing and make it available to reporters and the interested public in the hall outside the hearing room.

Contact: Gary Miller, 427-3060 (Evenings: 675-5662)

Additional Note: The Heartland Institute has commissioned a study of the minority set-aside program in Illinois and expects the results to be available by November 1988. Professor Daniel Polsby (Northwestern University Law School), a coauthor of the study, will be available at this event to answer questions about the set-aside program. We believe legislators and the public should hear from all sides on this complex issue, and we are dismayed that an ostensibly public hearing has been used as a forum for the views of only one interested group. The Heartland Institute neither supports nor opposes minority set-asides.

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STATEWIDE TRANSPORTATION ALLIANCE OF ASSOCIATIONS

Members:

Associated General Contractors of Illinois
Illinois Asphalt Pavement Association
Illinois Concrete Council
Illinois Construction Industry Committee
Illinois Road Builders Association
Southern Illinois Contractors Association
Underground Contractors Association
United Subcontractors of Illinois

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August 17, 1988

Honorable Ike Skelton
Chair Subcommittee on Procurement,
Innovative & Minority Enterprise
House Committee on Small Business
Room B363 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Skelton:

The National Association of Women Business Owners (NAWBO) is the representative of women-owned businesses across the United States. For over a decade NAWBO has been at the forefront of efforts by women-owned businesses to insure that women-owned businesses receive equal access to government contracts. As part of that effort, NAWBO strongly supports HR 5050, which would add a new requirement that federal agencies develop prime and subcontractor goals pertaining to small business concerns owned and controlled by women.

The cause of NAWBO's concern is obvious from statistics which indicate that women-owned businesses generally receive contracts worth less than 1% of the total of government contract dollars. Historically, therefore, NAWBO has supported programs intended to increase the number and dollar amounts of contracts awarded women-owned businesses. In doing so, NAWBO has supported separate goals for members of the socially and economically disadvantaged groups, minorities, and women under the Department of Transportation's (DOT) Minority Business Enterprise (MBE) program for fostering participation of firms owned and controlled by minorities and women.

In 1987 Section 105(f) of the Surface Transportation Assistance Act of 1982 was amended to include women in the definition of "socially and economically disadvantaged individuals", thus, making women-owned businesses eligible for DOT's Disadvantaged Business Enterprise program (DBE). Since women were determined by Congress to be DBE's and the MBE and DBE criteria were essentially the same, DOT combined the programs to provide for one DBE goal
(Federal Register, October 21, 1987).

Equal access and participation in DOT's program is a particularly serious concern to NAWBO since the contracts awarded by DOT are primarily in industries such as construction and architect engineering, which traditionally have been male-dominated industries. Thus, the women-owned firms that would benefit from DOT contracts are firms that have had an extremely difficult time gaining equal access to those industries. Under these circumstances, where the separate goals were not being enforced and women-owned businesses were not being given equal access, NAWBO is concerned about changing the present structure, which seems to be yielding contracts for women-owned businesses. At the same time, NAWBO remains deeply committed to avoiding conflicts with other groups that also have had unequal access to government contracts. We urge Congress to provide for separate strongly enforced goals.

Finally, we would like to suggest that Congress request information from DOT on the allocation of contracts. This information should be available from DOT since the applicable regulation, 49 CFR 23.49, maintenance of records and reports, provides for maintaining separate information on firms owned and controlled by minorities and those controlled by women.

Please accept this letter on behalf of NAWBO as part of the official record of the August 8, 1988 hearing on "Solutions to the barriers of Minority Participation on the Dan Ryan and other National Transportation Projects."

We thank you for this opportunity to provide our comments.

Very truly yours,

Peggy Leonard

Peggy Leonard
President
NAWBO

Hazel King

Hazel King
President
Chicago Chapter

TESTIMONY OF

THE

NATIONAL WOMEN BUSINESS ENTERPRISE ASSOCIATION

SUBMITTED BY:

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RESPONSE TO TESTIMONY GIVEN AUGUST 8, 1988 IN CHICAGO, ILLINOIS

The issue of women's equality in the highway construction industry will be a difficult one for Congress to solve. Before the issue of women's equality can be solved Congress must address the very essence of discrimination, the definition of "disadvantage small business" and the future of the Disadvantage Business Enterprise Program. These issues have been raised because the black members of the United States House of Representatives, believe the inclusion of women in the DBE Program will establish a precedent that will destroy the affirmative action progress for minority males.

When one looks at the reasons for affirmative action for minorities in our society, one can not over look the same parallels women have had to face in securing equal opportunity in all areas of our social, economic and political life. History has a way of not allowing us to not see the truth about events and struggles in our development as a people. The truth, if the minorities want to believe it or not, is that women have had the same struggle for equality and justice in our nation. The truth is, white males make more money than black males, black males make more money than white females and white females make more money than black females. The truth is, black males won the right to vote before women - white or black. The truth, is many private clubs that once excluded black males are the same private clubs that even today exclude white single females. The truth is, there are more elected minorities in our nation on the local, state and national levels than women. This statement is reflected in the fact that there are only 24 females in all of the United States Congress. Women of all colors, like minorities, have been shackled by the chains of discrimination and second class citizenship --- fighting for the right to participate equally as responsible adults in our democracy.

The minorities, not the majority of women in the highway construction industry, have tried to separate the DBE goal. The minorities, not the majority of women, have chosen to pit

Women are important too!

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minorities against women. Women owned businesses have asked only to be treated equally and have the equal opportunity to compete in the highway program in which they have participated since 1980.

In 1982 when Congress created the DBE Program in the last hours of a floor vote on the Surface Transportation Assistance Act of 1982, women were not included in the program . This negative action by Congress would devastate the administrative WBE program for the next five years. The facts are real and persuasive that from January 1983 to April 2, 1987 minority participation grew from 5% to 13%. Women's participation grew from 3% to 3% in that same period. Of course, for women there was no growth at all. However, since April 2, 1987, women's participation has grown from 3% to 4.7%. The increase for women has not cut into the traditional 10% for minorities. The 4.7% has cut into the remaining 90% of the Federal aid highway moneys.

The only chance women owned businesses had, to gain an equal opportunity to grow and develop, in the highway construction industry, was to be included in the DBE program under one goal. The very survival of women and their rights as viable, responsible, contributing citizens lay in the balance of that effort.

Congress has acted wisely and responsibly by including women as a part of their efforts to affirm Congresses support of all "disadvantage" groups. It was extremely unfair that women were excluded from the DBE Program in 1982, either in a single goal or in a separate goal. Women should not be penalized now because they were overlooked unfairly by Congress in 1982. Congress has given women an equal chance to compete for at least 10% in each of the respective states. Congress can not now turn around and render women to a lesser, secondary goal,after giving all WBE's a chance to compete for at least 8% more.

Congress must address several questions in determining if women are economically disadvantaged, and if they should continue to participate in the DBE Program. What constitutes a "disadvantage small business?" Are women owned businesses in the highway construction industry disadvantage small businesses? Let's address these questions.

Fact- Women owned businesses have more trouble receiving bonding than any other segment of the highway construction industry. (Report Small Business Committee)

Fact- Women owned businesses have to deal with the realization that it is still "a man's world" and men would rather do business with another man regardless if the man is black or white. (report Small Business Committee)

Fact- According to the United States Bureau of Census, women own approximately 1/4 of all small businesses, but receive only 10% of the business receipts.

Fact- Women owned businesses procure less than 1% with the Federal Government, even though, an executive order, signed by

President Jimmy Carter in 1979 instructed each Federal agency to set up an affirmative action goal for women. (Report Small Business Committee)

Fact- Women earn 40% less than men for the same job or position as reported by the Department of Labor.

Fact- Women tend to start their businesses with substantially less capitol than men and usually with no borrowed capitol. When borrowing money, women relied less on banks than did men, probably reflecting a lingering reluctance on the part of bankers who are for the most part men to make loans to women owned businesses. (Report Small Business Administration)

Fact- There are three times more minority owned businesses than women owned businesses in the highway construction industry according to the DBE listing for 50 states.

Fact- 80% of new business, women owned sole proprietorships, are started from scratch and not bought from others or inherited. (SBA Report)

Fact- certification and or recertification into the DBE Program for women is five times harder than it is for minorities (as per FHWA Data)

The answers to the questions are very clear. Women owned businesses are certainly disadvantaged small businesses and especially in the highway construction industry.

In the past (and for sure in the future), the issue of racial discrimination has been suggested, by several black members of Congress, to be one of the main components as to why women were added to the DBE Program. This accusation is only a smoke screen to protect the interests of minorities, to be guaranteed a 10% set-aside. There were no racial motives intended when women were added to the DBE program nor were there any racial overtones intended on the Dan Ryan Expressway project.

Let's look at the facts on how women were really added to the program and why. Also let's investigate the Dan Ryan Expressway controversy.

Contrary to the black caucus belief, women owned businesses in the highway construction industry independently took responsibility for themselves for the inclusion of women in the DBE Program. None of the Prime Contractor Associations had anything to do with the inclusion of women in the program nor were they responsible for the establishment of the single goal. The inclusion of women crossed political party lines and it was not a Republican compromise. There was never any doubt the House Public Works Committee supported the re-authorization of the DBE Program and the full House would not continue to support the DBE Program. What was feared, however, was if women were not added to the program the cry of discrimination would plague the halls of Congress.

The Disadvantage Business Enterprise provision, without the inclusion of women, was in the original House Transportation Bill,H. R. 3129 Section 106(c) introduced July 31, 1985. H. R. 3129 was basically the same bill that became H. R. 2 in the 100th. Congress.

According to the legislative history on the creation of the Disadvantage Business Enterprise Program there was no formal or informal discussion on the creation of a goal setting program for minorities. The original provision was added in 1982 on the floor of the United States House of Representatives by Congressman Parrin Mitchell of Maryland, without the knowledge of most members of the Public Works Committee or the staff. Mr. Mitchell, for constitutional justification for his programs, used the Small Business act, which list minorities, for the basis of establishing disadvantage and goal setting. Prior to the creation of the DBE Program, Federal Highway Administration had an administrative program for minorities with a good faith average of 5%. Black entrepreneurs constituted approximately 60% of that administrative program.

The issue of including businesses owned by white women, known as WBE's, did not arise informally in the Public Work's Committee's deliberations' because there were no committee discussions about the inclusion of white women nor any discussion of the DBE program in general. This information is based on the legislative history that accompanies the 1982 Surface Transportation Assistance Act of 1982.

It has been said in several Small Business hearings that Elizabeth Dole administratively set a goal of 3.2 % for WBE's. This is totally false. When Ms. Dole took office in January, 1981, Federal Highway Administration had already established the WBE Program. The program was based on a good faith effort by each state. The good faith effort did not have to be reached nor justification presented if the good faith effort was not reached. Most states had an average of 2% for the WBE good faith effort. However, a few states had WBE participation higher than 1 or 2%, therefore the 3% national average. Secretary Burnley of The Department of Transportation in a response to Congresswoman Collins' letter requesting Federal Highway Administration to revert WBE participation back to Elizabeth Dole's administrative goal of 3.2%, informed Ms. Collins that no such goal existed, and, that no individual or department under his jurisdiction had ever limited the participation of any disadvantage group.

It has been automatically assumed that since the 10% goal was not raised when women were added to the program that one-third the amount for disadvantaged minorities would be reduced. This is not true. First of all women have never had a set-aside goal. The only legislative goal is the 10%. The WBE good faith effort, depending on the year fluctuated between 2.2% to 3%. There was never any guarantee for women. On a state level most WBE's looked for a potential goal of 1.5% anything over 1.5% was a gift. Also there were 19 states that historically had trouble reaching the 10% mandated goal, much less an administrative goal for WBE's. When women were collapsed into one single goal, for the first time in history women were guaranteed the opportunity to compete equally. Since the inclusion of women the national average has been maintained at approximetely 15%. 10.6% for minorities and 4.4% for women. Women's participation has developed from the remaining 90% of the Federal aid highway projects.

States have the legal authority to increase the single DBE goal if they choose to do so. Fifteen (15) states have exercised that right and have raised their individual goal higher than 10%. Instead of the minority's fear of women participation in the DBE Program, minorities should be joining together with women in lobbying the state legislature and Department of Transportation to raise the DBE goal. Each House of Representative member should be meeting with their state Department of Transportation officials to understand the program and why the goal for their state has been established.

In Fiscal Year 1987, Federal Highway twelve month report there are nineteen (19) states who did not reach the 10% goal. Even with the inclusion of women, in Fiscal Year 1988, these states have continued to have difficulty reaching the 10% mandate. To try and change national legislation because of problems in one state would not be in the best interest of the nation or all its people.

Now, let's look at the facts to clear up the many misunderstandings on how women were added to the DBE goal. As already stated, the re-authorization of the DBE Program was in the original highway bill H. R. 3129, submitted to Congress on July 31, 1985. In 1986, the Public Works Committee chose not to have any hearings on H. R. 3129. The re-authorization provision stayed intact and there was never any discussion or approval by the Public Works Committee for an additional 10% set-aside for disadvantage minorities. This fact can be proven by the legislative history of H. R. 3129. The only discussion to amend section 106 (c) of the House highway bill was the inclusion of women in the DBE Program. In lobbying both the United States Senate and House of representatives, on behalf of women, PSM Consultants, initially lobbied for women to be a part of the DBE Program with a separate equal goal. In both the House and the Senate Public Works Committees the idea of increasing the DBE goal beyond the ten percent under any circumstances was completely out of the question. The only hope women had to have an equal opportunity to compete and survive in the highway construction industry was to be added to the DBE Program under a single goal of 10%.

The United States Senate Sub-committee on Surface Transportation started conducting hearings on the creation of the DBE Program as early as 1983. On March 20, 1984, March 22, 1984, March 19, 1985, July 1985 and May 20, 1986 hearings were held and the discussion of the inclusion of women in the DBE program was addressed. In these hearings, women business owners expressed their dissatisfaction, discrimination and lack of development because WBE's were excluded from the DBE Program. On May 6, 1986 United States Senate Bill 2405 was introduced. S. 2405 had a provision in section 130 (B)(3) which included women in the Disadvantage Business Enterprise Program. Mr. Hammerschmidts' Amendment to H. R. 3129 which was three months after S. 2405 contained the same language as section 130 (B)(3) of the Senate Highway Bill.

In the case of House Bill 3129, introduced on July 31, 1985, there was no hearing held on this bill after it's introduction, except on August 8, 1985 when a hearing was held in California, concerning a California highway project which was then incorporated into H. R. 3129. H. R. 3129 passed the Full House on August 6, 1986. H. R. 3129 became H. R. 2. H. R. 2 had only one hearing on the speed limit issue, which was eventually passed. H. R. 2 became Law on April 2, 1987.

As was stated in the May 4th. Small Business Sub-committee hearing, the approval for the inclusion of women in the DBE Program was addressed by Mr. Mitchell. Mr. Mitchell at that time represented the black caucus on the DBE set-aside. The Public Works Committee worked with Mr. Mitchell weeks before the August 6th. vote. There is no doubt that Mr. Mitchell felt he did not have the vote to both defeat the Hammerschmidt Amendment and retain the set-aside. He obviously felt it was better for Blacks/Hispanics to participate with white women in a ten percent set-aside than to have no set-aside at all. Also, Mr. Mitchell, has in the past, supported equal opportunity for women of all colors.

Now, let's address the Dan Ryan Expressway Project. In the past, hearings conducted on the Dan Ryan Expressway have heard suggestions of racial overtones and the accusation that newly certified white WBE's fronts were taking work away from minorities. Also, that the Republican Governor James Thompson was some how responsible for the problems that developed on that project. Let's look at some facts.

There was an Inspector Generals investigation into the certification process of the Illinois Department of Transportation. The report was requested by Congresswoman Collins, because she and other black leaders believed Illinois Department of Transportation had certified white female fronts illegally and these fronts were taking all the work away from the minorities on the Dan Ryan Expressway. What the Inspector General reported indicated was there was indeed some problems with the Illinois certification program. Many certified DBE's had not been properly checked; however, there was no evidence to indicate white women had been treated any differently than minorities. In fact the Illinois certification process had been at the advantage of the minorities, not the white female owned businesses.

There is no proof what so ever that the white female companies that were awarded the sub-contracting projects on the Dan Ryan Expressway are fronts or that any of the female companies had been newly formed. Factually, the average years in business for the women owned companies on the Dan Ryan Expressway exceeded 4 years.

Repeatedly it has been said by black leaders in Illinois, that newly formed certified WBE's are taking the work away from the established certified minorities. However, if one looks at the Illinois DBE list one would see that since July, 1986, (before the inclusion of women) to July 1988,(a 2 year period), there were 78 newly formed minority owned businesses and there were only 24 newly formed white women owned businesses. The total DBE certification in the highway construction area for Illinois is 454. There are 324 minority owned companies and 130 white female owned companies. The rate of growth for both groups is exactly the same, approximately a 10% growth rate per year.

The accusation that Governor Thompson is to blame for the way the Dan Ryan Expressway projects were awarded is an unfair political opinion. The Federal goal established by Illinois Department of Transportation is 10%. The Federal Statutes are very clear that Prime Contractors may choose either DBE's or WBE's or a combination of the two groups to fulfill their DBE requirements. The Illinois state goal established by State legislature deals with state funds only. It would have been totally illegal for Illinois' Governor to step in and award 10% to minorities and 5% to white women.

White women were awarded the set-aside sub-contracts on the Dan Ryan Expressway because they aggressively competed fairly for the jobs. There were no deliberate political or racial motives involved in the Dan Ryan Expressway Project. Certified women in Illinois are aggressively going after the opportunity to grow and develop and secure their own economic freedom.

The issue of women's equality in the highway construction industry must have fair and impartial hearings. The majority of women (WBE's) want to remain under a single goal and compete equally with minorities for the minimum ten percent goal. The single goal appears to be working well for all parties involved. The minorities are still obtaining their part, the women participation is growing and the Prime Contractors have a large pool from which to draw. On a state level, any state can raise their 10% goal to any goal they so choose. So in the states were there is a large participation of both women and minorities, the single goal of 10% should be increased.

As long as there is a suggestion of a two goal system where the women's goal will not be equal to the minority goal, the majority of women owned businesses in the highway construction industry will be opposed to any changes in the single goal system in the DBE Program.

July 13, 1988

Congressman Gus Savage
1121 Longworth Bldg.
Washington, DC 20515

Congressman Savage:

Enclosed you will find copies of letters sent Congressman Andersen and/or Congressman Hammerschmidt in response to your proposed amendment to separate the DBE goal and have a 10%-3% split. In a letter dated May 23, 1988, you indicated that both minorities and women wanted separate goals. Also you stated that at a May 4th Small Business hearing, the women's groups testifying supported separate goals and the 10%-3% split. Mr. Savage, this is not true. I testified to your committee against separate goals and Patricia Shea, President of the Michigan Women's Contractors Association, testified against separating the goals.

I represent several hundred Women Business Enterprise (WBE) companies all across the United States. I wrote to over 2,000 WBE firms asking them to respond to your letter. 92% of the WBE's wanted to keep a single goal. Why should women want 3% when they can compete for at least 10% in their state?

Mr. Savage, if you want to believe it or not, women in the highway construction industry have had the same problems as minorities seeking equality and economic growth. Women have to adhere to double standards in certification and are highly discriminated against by Federal and State DOT's that implement the program. A natural check and balance system has developed that will not allow women be certified unless they are legitimate companies.

The issue of fronts should not be raised by the minority faction because anyone in the highway construction industry knows that there are many more minority fronts than WBE fronts. In fact, if a woman is married or if she has any males working for her, she is considered a front by minorities. Of course, this is not fair nor is it true. The issue that white male contractors would work with white women versus minorities is also not true. Prime contractors have three criteria for choosing a sub-contractor: low quote, quality work and a sub-contractor who pays his/her suppliers.

Mr. Savage, if there is going to be any legislative changes at the present time, it should be to increase the economic pie from 10% to 13%. Also fair and impartial hearings should be held by the Public Works Committee. FHWA reports there has not been any adverse effects of the one goal on minorities and women have also thrived under the system. The national average is at 15%.

In the second quarter of 1988, minorities were awarded more contracts and dollars than ever before.

Deborah Wilder, Executive Director of Women Construction Owners/Executives, who testified before the May 4 hearing, represents less than 1% of the WBE's in the highway construction industry. The majority of women in the industry want one single goal or at least equal separate goals of 5%-5%. However, separating the goals is not the answer. Increasing the goal from 10% to 13% would help everyone involved.

I don't believe that you really care about fair competition, equality, discrimination or ones civil rights. I believe you only care about protecting the black man's interest in the DBE Program. Discrimination is wrong no matter what the color, sex or creed. What you are trying to do is wrong -- very wrong. Women owned business in the construction industry will never support a 10%-3% split.

Sincerely,

Joann Payne

Joann Payne
PRESIDENT, PSM CONSULTANTS

Enclosures

JP/joo

G B S CORPORATION, INC.
P.O. BOX 100
RIPLEY, MISSISSIPPI 38663

Grace Robertson - President
Telephone 837-4127

June 22, 1988

Ms. Joann Payne
P.O. Box 21001
Little Rock, AR 72212

Dear Joann,

I'm sorry I've been so long about responding to your letter. I was on vacation for a few days, so I'm a little late with my mail.

I read Congressman Gus Savage's letter and agree totally with you about it's accuracy or maybe I should say non-accuracy. I think there is no doubt where his priorities are, or with whom.

I feel a National Association to look after WBE's interest would definitely be beneficial. I would be willing to be a member and help with the organizating if needed.

Enclosed are copies of the letters I sent to Representatives Glenn Anderson and John Paul Hammerschmidt.

If I can be of any help to you, please notify me. Thank you for keeping us informed.

Sincerely,

Sherry

Sherry Hill
Vice President

A Women's Business Enterprise

G B S CORPORATION, INC.
P.O. BOX 100
RIPLEY, MISSISSIPPI 38663

Grace Robertson - President

Telephone 837-4127

June 22, 1988

Representative John Paul Hammerschmidt
2207 Rayburn House Office Building
Washington, D.C. 20515

Re: Opposition to the Savage Amendment

Dear Mr. Hammerschmidt,

GBS Corporation, Inc. is a Women's Business Enterprise. We contract and subcontract minor concrete and earth related construction projects. GBS is 100% owned by women.

We are adamantly opposed to Congressman Gus Savage Amendment to separate minorities and women owned businesses. Women are at a disadvantage as much as minorities. We feel women are justified in competing for the 10% set aside for disadvantaged businesses. We feel competing is a vital part of being a successful contractor. We have no problem with competing as a disadvantaged business. We have every intention of becoming a successful Prime Contractor, we feel every company should have that goal. We also feel that being able to compete with a fair chance will help us reach these goals.

Thank you for your time in listening to my views. I do ask for your help in opposing this Amendment.

Sincerely,

Sherry Hill

Sherry Hill
Vice President

A Women's Business Enterprise

Three Rivers Construction, Inc.

General Contractors
Women Owned Enterprise
Equal Opportunity Employer

P.O. Box 258
Alpine, Wyoming 83128
307-654-7587

June 15, 1988

Representative John Paul Hammerschmidt
[illegible] Rayburn House Office Building
Washington, D. C. [illegible]

Dear Representative Hammerschmidt:

I recently had the opportunity to read a letter from [illegible] support the [illegible] Amendment.

I have not been unhappy with the sharing of the goals [illegible] barriers for the women in the industry as well as being grossly unfair!

Unfortunately, we women have been slow to organize a national association for WBE's--unlike the organization that has been organized to advance the rights of minority men.

My personal experience is that the set aside program does NOT actually give me a job, but allows me to be seriously considered IF we are competively low bidder on all levels of bidding. It also encourages the prime contractor to actively encourage minorities--men and women--to become active in the bidding process. If it were to give the minority faction a free ticket to escalated costs borne by the taxpayer, then it would not be working properly.

Thank you for allowing me the opportunity to be heard.

Yours very truly,

Dorothy I. Reinhart
Dorothy I. Reinhart

Three Rivers Construction, Inc.

General Contractors
Women Owned Enterprise
Equal Opportunity Employer

P.O. Box 256
Alpine, Wyoming 83128
307-654-7587

June 15, 1988

PSM Consultants
Box [illegible]
Little Rock, AR [illegible]

Attention: Joann Payne

Dear Ms Payne:

I received your letter of June 1, 1988, and appreciate your alerting me to what is going on in Washington, D. C.

I have written a letter to the representatives that you [illegible] I am also writing a similar letter to our local [illegible]

Your suggestion in your letter stating that it is time to join together and organize a National Association for WBE's in the highway construction industry certainly has a lot of merit. I would certainly consider becoming involved in such an organization. Living way out in Wyoming where there are not a lot of us, makes one feel like the Lone Ranger. A system of communication could be important to me.

Please let me know if you plan to expand on this idea. It would be quite difficult for me to because of distance to be as active as you would probably like, but I would be supportive of efforts to stop discrimination of women in the industry. As I stated in my letter, I do not want a free lunch--I just would like to have the opportunity to be treated fairly.

Yours truly,

Dorothy J. Reinhart

Dorothy J. Reinhart

Three Rivers Construction, Inc.

General Contractors
Women Owned Enterprise
Equal Opportunity Employer

P.O. Box 268
[illegible] Wyoming [illegible]
[illegible]

June 15, 1988

Representative Glenn Anderson
2329 Rayburn House Office Building
Washington, D. C. 20515

Dear Representative Glenn Anderson:

I recently had the opportunity to read a letter from Mr. Gus Savage [illegible] [illegible], I would like to urge you to support the Savage Amendment.

I have not been unhappy with the sharing of the goals with the [illegible] goals. [illegible] in the industry as well as being grossly unfair!

Unfortunately, we women have been slow to [illegible] a national association for WBE's--unlike the [illegible] that has been organized to advance the rights of minority men.

My personal experience is that the set aside program does NOT actually give me a job, but allows me to be seriously considered if we are competively low bidder on all levels of bidding. It also encourages the prime contractor to actively encourage minorities--men and women--to become active in the bidding process. If it were to give the minority faction a free ticket to escalated costs borne by the taxpayer, then it would not be working properly.

Thank you for allowing me the opportunity to be heard.

Yours very truly,

Dorothy I. Reinhart

SAFE-T-FLARE RENTAL SERVICE, INC.
P.O. BOX 10648 • 436-2548 • KANSAS CITY, MISSOURI 64118

June 14, 1988

The Honorable John Paul Hammerschmidt
2160 Rayburn House Office Building
Washington, D. C. 20515

Dear Representative Hammerschmidt:

[illegible] I am opposed to [illegible] Representative [illegible] Corrections Bill in [illegible] stem regarding WBE [illegible] shes us to go back [illegible] E's.

[illegible] been in business [illegible] hich is one of the [illegible] s to take advantage [illegible] ur traffic control [illegible] sage of federal [illegible] MBE and WBE [illegible] control companies [illegible] m are new, minority owned companies.

Because we qualify and because we intend to survive, Safe-T-Flare is a certified WBE company. Representative Savage argues that the inclusion of WBE's in the 10% DBE set-aside has pitted women and minorities against each other competing for 10% of the business. On the contrary, it has made it possible for us (women) to compete. Prior to 1987 we were being forced out of our speciality business by contractors trying to fulfill their 10% MBE goal. Today we are equal. It is better to compete equally for 10% of the work than not to be considered at all. 10% of something is better than 90% of nothing.

Give us a chance, please oppose Representative Savage's effort to ammend the Technical Corrections Bill.

Sincerely,

Frances L. Carmack

Frances L. Carmack
President

OUR MOST IMPORTANT PRODUCT IS "SAFETY"

HCA

WBE

RUL, INC.
P. O. Box 19114 • 100 Longale Road
Greensboro, North Carolina 27410
Telephone (919) 292-0271

June I4, I988

Ms. Joann Payne
P.L.M.
P.O. Box 2I00I
Little Rock, Ar. 7222I

Dear Joann;

Thank you for your letter on the Savage Amendment. I wrote both Representatives and hope our letters help. Also please let me know if the other WBE's would be interested in forming a National Association. Hope you will continue to fight for the women's rights.

If I can be of further assistance,please advise. Enclosed please find the two letters I sent to Washington, D.C.

Sincerely,

RUL, INC.

Margaret L Perkins

Margaret L. Perkins
President

Women Business Enterprise

WBE

RUL, INC.
P. O. Box 19114 • 100 Longale Road
Greensboro, North Carolina 27410
Telephone (919) 292-0271

June 14, 1988

Representative John Paul Hammerschmidt
2207 Rayburn House Office Building
Washington, D.C. 20515

RE: The Savage Amendment
OPPOSED............

Dear Representative Hammerschmidt;

I am opposed to the Savage Amendment on the WBE's 3.5 %. If we are going to have minorities in the bid lettings then we should all be equal.

If I can be of further assistance, please advise.

Sincerely,

RUL, INC.
Margaret L. Perkins
Margaret L. Perkins
President

Jo Ann Hance, Ltd.

D.B.E./W.B.E.

P. O. BOX 293
LEXINGTON, KY. 40584
(606) 268-1300

June 16, 1988

Ms. Joann Payne
PSM Consultants
P. O. Box 21001
Little Rock, Arkansas 72212

Dear Ms. Payne:

Thank you for your timely letter dated June 3, 1988. Prior to receiving your communication, I was aware of the Savage (justly named!!) amendment. (See the letter to my Ky. Congressman dated June 7 - as I did not receive your letter until June 13.) In any event, as you can tell I am in complete agreement with your thoughts and yes, would be very interested in forming an organization that would represent WBE's. As a matter of fact, recently contacted the ARTBA group for an application but was not too comfortable that they would represent the DBE/WBE (even Minority for that matter) faction of the industry. They seem to represent the highway construction industry well but that's all. So you see, I was seeking a place to not only vent my thoughts but with some assurance they would not be in vain. Like so many others, I have neither the time nor money to undertake such a plight alone. Additionally it is a fact that in a group there is much greater impact - whatever the cause.

You suggested an organizational meeting in July or August; with some plannin I would be pleased to meet with you and look forward to a tentative schedule from you. The fees you suggested seem realistic and within my range. Hopefully, I could attract others as time passes.

Although I have received many communications from you in the past few years have never been too sure what your role was or just exactly what your company did - please enlighten me. However, do recognize that you are dedicated to the same goals that we other women have and that alone makes me supportive of your efforts.

Look forward to hearing from you at your convenience.

Sincerely,

Jo Ann Hance

Jo Ann Hance

JAH/ss

Jo Ann Hance, Ltd.

D.B.E./W.B.E.

P. O. BOX 293
LEXINGTON, KY. 40584
(606) 266-1900

June 7, 1988

Congressman Larry J. Hopkins
6th Congressional District
333 West Vine Street
Lexington, Kentucky 40507

Congressman Hopkins:

I have called upon you in the past and never have you left me down. Thus, once again feel you can look out for not only my needs but also all others in my profession.

On May 4, 1988, the House Small Business Subcommittee on Procurement, Innovation and Minority Enterprise Development heard testimony on the impact of the Disadvantaged Business Enterprise (DBE) set-aside goals, as mandated in the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURRA).

The hearing chaired by Representative Ike Skelton (D-MO) focused on perceived inconsistencies in the ratio of construction contracts awarded to Minority Business Enterprises (MBE's) and Women Business Enterprises (WBE's) since the enactment of the STURRA. Much of this so-called "perceived inconsistency" was based upon a recent construction project in Chicago, the Dan Ryan Expressway.

The amendments presented, which included goals to reduce the WBE portion of the set-aside (now 10%) to 3.5%, 5%, were tabled. The issue has now been sent to the Public Works Committee and it is understood will be chaired by Representative Gus Savage from Chicago!

Congressman Hopkins, let me put these percentages in perspective..... As you know, you must first be certified annually to determine that the standards set forth in 49 CFR Part 23 and 600 KAR 4:010 continue to be met; next you must be pre-qualified by the D.O.T. in particular areas of expertise. These qualifications depend upon the expertise of yourself and those persons you employ (and in Ky., it is understood that you are a member in good standing of the Century Club). Keep in mind you are a disadvantaged firm, i.e., little capital, accounts receivable and income but must have enough to pay these employees who, to date, have nothing to do because you don't have a project yet - a real "Catch 22". Now if you can suffer through this, and a contractor/ consultant with a $100,000 project agrees to use your firm, the allocated (set-aside) is 10% or $10,000. To be realistic, if you have three employees, each would make $3,000 and the owner would get the remaining $1,000 to pay the Employers taxes, hospitalization and other overhead items, not much, if any, left. Assume you were extremely fortunate and got 3 projects a year, each of these persons would still only have an income of $9,000. However, this is highly unlikely - that is to get more than 2 projects in one year. Point of all this analogy is to emphasize the impossible situation of 3.5% - 5%, when you were required in the first place - back in the certification process - to have qualified (in most cases, P. E.'s, etc.) persons to perform these tasks. These are persons who deserve the work, as does the owner of the W.B.E. firm who is taking all the risks for a very small portion of the project. You see, women have come far in the past few years but we who have worked so hard to attain this role should not be penalized for accepting the lesser percentage of the project with talents/capabilities of those firms having the larger percentage of the project.

It may not seem so, but have attempted to make this brief but feel you can understand my (our) dilemma. Will appreciate anything you can do or suggest that I (we) do to help the cause.

With best wishes and appreciation for your continued efforts to represent us so well in Washington.

Sincerely,

Jo Ann Hance

P. S. Should you feel a representative delegation would be helpful to meet with you or whomever you suggest, I would be pleased to arrange it.

JAH/ss

Jo Ann Hance, Ltd.

D.B.E./W.B.E.

P. O. BOX 293
LEXINGTON, KY. 40584
(606) 266-1800

June 15, 1988

Honorable John Paul Hammerschmidt
2207 Rayburn House Office Building
Washington, D. C. 20515

RE: Gus Savage Amendment
Reduction of WBE back to 3.5%

Dear Representative Hammerschmidt:

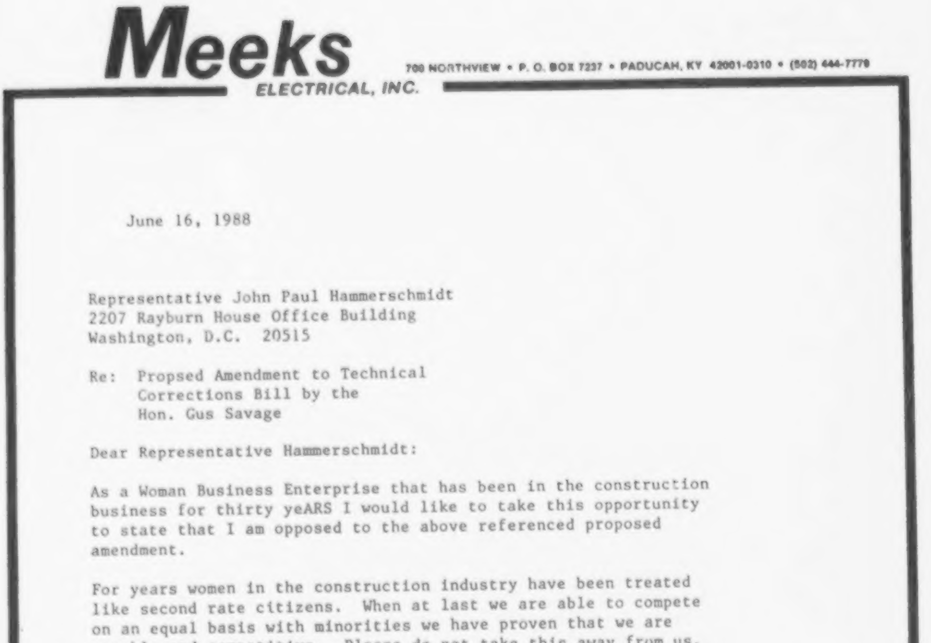
Please take this letter as my vote against Representative Gus Savage's amendment to reduce the contract requirement for Woman Business Enterprises back to 3.5% - as a separate goal. It appears that the WBE's have become successful in competing with the minority group and this is not popular. It is unclear to me if this is a national problem or strictly a localized situation which leads me to wonder if Representative Savage would be so vocal if it were not for the recent Dan Ryan Expressway rumblings in Chicago.

Regardless, women have come too far to be set back. The STURAA of 1987 was a step in the right direction and has not been in effect long enough to be judged for its success or failure. True, it does need enforcement, i.e., firms who are neither capable nor legally qualified to perform services as a disadvantaged firm should be elimianted from the program BUT we who have strived for so long to be considered for even this modest percentage should not be deprived of the opportunity to do so.

At this point, you can be our voice and I am requesting that you speak not only for me but all of those who feel as I do in supressing this amendment from slipping into a new law that would again reduce our percentage back to 3.5%.

Respectfully,

JAH/ss



Meeks
ELECTRICAL, INC.
700 NORTHVIEW • P. O. BOX 7237 • PADUCAH, KY 42001-0310 • (502) 444-7779

June 16, 1988

Representative John Paul Hammerschmidt
2207 Rayburn House Office Building
Washington, D.C. 20515

Re: Propsed Amendment to Technical
Corrections Bill by the
Hon. Gus Savage

Dear Representative Hammerschmidt:

As a Woman Business Enterprise that has been in the construction business for thirty yeARS I would like to take this opportunity to state that I am opposed to the above referenced proposed amendment.

For years women in the construction industry have been treated like second rate citizens. When at last we are able to compete on an equal basis with minorities we have proven that we are capable and competitive. Please do not take this away from us.

Please be assured when a construction question arises, the general public will ask a black man before a woman and the struggle to correct this has been long and expensive.

Your help in defeating this amendment will be greatly appreciated by all the Women Business Enterprises.

Respectfully,

MEEKS ELECTRICAL INC.

Catherine Meeks
Catherine Meeks
President

CC: Joann Payne

Meeks
ELECTRICAL, INC.
700 NORTHVIEW • P. O. BOX 7237 • PADUCAH, KY 42001-0310 • (502) 444-7779

June 16, 1988

Representative Glenn Anderson
2329 Rayburn House Office Building
Washington, D.C. 20515

Re: Proposed Amendment to Technical
Corrections Bill by the
Hon. Gus Savage

Dear REpresentative Anderson:

As a Woman Business Enterprise that has been in the construction business for thirty years I would like to take this opportunity to state that I am opposed to the above referenced proposed amendment.

For years women in the construction industry have been treated like second rate citizens. When at last we are able to compete on a equal basis with minorities we have proven that we are capable and competitive. Please do not take this away from us.

Please be assured when a construction question arises, the general public will ask a black man before a woman and the struggle to correct this has been long and expensive.

Your help in defeating this amendment will be greatly appreciated by all the Women Business Enterprises.

Respectfully,

MEEKS ELECTRICAL INC.

Catherine Meeks

CAtherine Meeks
President

CC: Joann Payne

O'BRIEN & ASSOCIATES, INC.
CONSULTING ENGINEERS
1235 E. DAVIS ST/ARLINGTON HTS. IL 60005
(312)398-1441

June 16, 1988

Representative John Paul Hammerschmidt
2207 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Rep. Hammerschmidt:

I would like go on record as being opposed to the Hon. Gus Savage's Amendment to return to a two goal system for WBE's and DBE's. I feel the present system is beneficial and fair to all.

Very truly yours,

O'BRIEN & ASSOCIATES, INC.

Josephine O'Brien

Josephine O'Brien
JOB/j

ASSOCIATES, INC.
NSULTING ENGINEERS
ST/ARLINGTON HTS. IL 60005

NO. SUBURBAN, IL
PM
15 JUN
1988

WE ARE THE NE
POSTAL SERVIC
WE

Domestic USA

Representative Glenn Anderson
2329 Rayburn House Office Bldg
Washington DC   20515

PIRÃMIDE
CONSTRUCTION
INC.

DBE/WBE
1409 3rd Rd.
Pueblo, CO
81007

Diana E. Crane
President
Ofice: 544-5603
Home: 544-5603

Ms. Joann Payne
c/o P.S.M. Consultants
P.O.Box 21001
Little Rock, AR.72221

June 24th. 1988

Dear Joann,

Received your letter a few days ago and have written the enclosed as you requested. Thankyou for all your corresspondence in the past, which I do apologise at not answering some of it, however, bless you for the good work you are trying to bring about for us WBEs, I know its hard but you are doing a tremendous job but as I have heard said "Quitters never win and Winners never quit!" that is you, thankyou Joann.

You take care,
Diana E. Crane
Diana E. Crane

Enc.

PIRĀMIDE
CONSTRUCTION
INC.

DBE/WBE
1409 3rd Rd.
Pueblo, CO
81007

Diana E. Crane
President
Ofice: 544-5603
Home: 544-5603

The Honorable
Rayburn House Office Building
Washington, D.C. 20515

June 24th. 1988

Dear Congressman

I am writing to urge you not to support Congressmans' Savage's Technical amendment of the "S.T.U.R." Assistance Act of 1987. Since the WBEs have been classified as DBEs also, it has given us better opportunitie for competetive bidding. To reduce the WBEs back to a 3.2% would be quite a set-back. If there must be goals then let the goals be equal for both Minoriti and Women.

Thanking you,
Respectfully yours,

Diana E. Crane

Diana E. Crane.

MHF
MAYLON H. FOWLER
CONTRACT HAULING INC.

160 Mine Lake Ct.
Raleigh, NC 27615
(919) 847-0711

June 23, 1988

Representative John Paul Hammerschmidt
2207 Rayburn House Office Building
Washington, DC 20515

RE: Proposed Amendment
Congressman Gus Savage

Dear Representative Hammerschmidt:

Enclosed please find copy of Congressman Gus Savage's letter sent to me by Joann Payne. In response, I adamantly oppose the proposed amendment of Congressman Savage.

Now in our 40th year, a WBE since 1977, I feel that women should have the opportunity to obtain up to 10% of Federal contracts, just as, any other minority group. In addition, discrimination of WBE's in any industry should come to an immediate halt. Incidentally, any return to the previous two-goal system regarding WBE's and DBE's would be discriminating.

Your cooperation and help in voting against the proposed amendment of Congressman Savage will be greatly appreciated. Please direct any comments to:

PO Box 97965
Raleigh, NC 27624-7965

With best wishes, I am

Very Truly Yours,

MAYLON H. FOWLER CONTRACT HAULING, INC.

Christine F Fowler

Christine F. Fowler, President

Enclosure

CF/bt

cc: Joann Payne

B & B WELDING COMPANY INC.
Bridge Contractors
477 EAST WILLOW STREET WILLIAMSPORT, PENNSYLVANIA 17701 (717) 323-4567

June 23, 1988

Ms. Joanne Payne
℅ P.S.M.
P.O. Box 21001
Little Rock, Arkansas 72114

Dear Ms. Payne:

Concerning your letter ofJune 3, 1988 enclosed find letters mailed to Congressmen, Glenn Anderson and John Paul Hammerschmidt pertaining to Congressman Gus Savages' amendment to the House Highway Technical Correction Bill.

I trust all women in business will take the initiative to address their negative feelings regarding this DBE/WBE crisis.

Keep up the good work !

Sincerely,

B & B WELDING CO., INC.

Mary Jo Bloom

Mary Jo Bloom, President

MJB/jbv
Enc: 2

B & B WELDING COMPANY INC.
Bridge Contractors
477 EAST WILLOW STREET WILLIAMSPORT, PENNSYLVANIA 17701 (717) 323-4567

June 22, 1988

The Honorable John Paul Hammerschmidt
United States House of Representatives
2207 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Hammerschmidt:

I am opposed to Congressman Gus Savages' amendment to the House Highway Technical Corrections Bill that would separate Women from the DBE goal of 10% and require Women to go back to the old administrative achievement of 3%.

It is quite obvious Congressman Savage is trying to cut Women Owned Businesses out of the free market place. If goals are going to be separated they should be equal.

As a Female Owned Business I am requesting your co-operation in not agreeing with Congressman Savages' amendment.

Sincerely yours,

B & B WELDING CO., INC.

Mary Jo Bloom

Mary Jo Bloom, President

MJB/jbv

cc: Representative Glenn Anderson

SEEDING LANDSCAPING SODDING

SLUSSER'S Green Thumb, Inc.

PREQUALIFIED AND CERTIFIED "DBE" CONTRACTOR
TELEPHONE 219-722-3102 -:- P.O. BOX 33
125 MONTGOMERY STREET
LOGANSPORT, INDIANA 46947-0033

June 23, 1988

Ms. Joann Payne
PSM Consultants
P.O. Box 21001
Little Rock, AR 72212

Dear Joann:

Enclosed is a copy of my letter to Representatives Anderson and Hammerschmidt.

Thank you for calling the Savage Amendment to my attention and for the work you have done for women owned businesses by testifying on our behalf at the Small Business Hearing.

I would be glad to be a member of a National Association to look after our interst in Washington. I also believe the time has come for women to join together. The harrassment I have been put through to retain my WBE status is unbelievable. I have been certified for seven years and each year my certification has been requestioned, delayed for months and denied; all with the hope, I am sure, that I would give up. I haven't and I won't.

Sincerely,

SLUSSER'S GREEN THUMB, INC.

Cecilia V. Slusser

Cecilia V. Slusser
President

CVS/js

cc: File

SEEDING LANDSCAPING SODDING

SLUSSER'S Green Thumb, Inc.

PREQUALIFIED AND CERTIFIED "DBE" CONTRACTOR
TELEPHONE 219-722-3102 -:- P.O. BOX 33
125 MONTGOMERY STREET
LOGANSPORT, INDIANA 46947-0033

June 23, 1988

Representative John Paul Hammerschmidt
2207 Rayburn House Office Building
Washington, D.C. 20515

RE: House Highway Technical Corrections Bill - Proposed by Congressman Gus Savage

Dear Representative Hammerschmidt:

I am the President of Slusser's Green Thumb, Inc., a seeding and sodding contractor for the State of Indiana. I have been an owner of Slusser's GreenThumb since 1963 and Incorporated in 1980. I received my Women's Business certification for the State of Indiana in 1981.

I am writing in regards to the House Highway Technical Corrections Bill proposed by Congressman Gus Savage of Illinois, asking that the old goals of 13% for DBE and 3.5% WBE goals be reinstated. I do not support this amendment.

Women's businseses are finally being treated equally with their inclusion as DBE's and are making progress in federally funded contracts. I have personally complained to the EEO office of the Indiana Department of Highways because of the low percentages set asides forced on WBE's. Until now, their hands were tied. It is blatently unfair to ask that our gains be taken from us. Women in Highway Construction are growing in strength and unity.

I ask you not to support the proposed amendment by Congressman Savage.

Sincerely,

SLUSSER'S GREEN THUMB, INC.

Cecilia V. Slusser

Cecilia V. Slusser
President

CVS/js

cc: File
cc: Ms. Joann Payne

AN EQUAL OPPORTUNITY EMPLOYER

Schmidt Construction Co. Inc.
bridges • culverts • pile driving

Box 70, Corner of Oak & Pine
Winfield, IA 52659
(319) 257-6714

June 21, 1988

Representative John Paul Hammerschmidt
2207 Rayburn House Office Building
Washington, D.C. 20515

Dear Sir:

We are a certified WBE/DBE construction company in the State of Iowa and in the State of Missouri and we are a totally 100% woman-owned and controlled business. We are opposed to the Savage Amendment and do not support it in any way.

We are adamantly opposed to any amendment that separates the DBE goal or gives women only 3.5%. If the goals are going to be separated, then they should be equal.

Very truly yours,

SCHMIDT CONSTRUCTION CO., INC.

By Elsa H. Grimmer
Elsa H. Grimmer, President

EHG:cl

WORK SAFE SUPPLY CO., INC.
P.O. BOX 9086
GRAND RAPIDS, MICHIGAN 49509
1-616-531-6825 . . . 2522 Chicago Dr., Grand Rapids Branch
1-517-754-2701 . . . 2993 Carrollton Rd., Saginaw Branch

June 21, 1988

Joann Payne
P.O. Box 21001
Little Rock, AR. 72221

RE: Your letter dated June 3, 1988

Dear Joann,

I am interested in supporting a National Association, but would hope the price could be lower.

I have enclosed copies of letters sent to the respective congressmen as you suggested.

Thank you for your continued work in our behalf.

Sincerely,

Kathy Babcock

Kathy Babcock

SAGINAW BRANCH • 2993 CARROLLTON RD. • PH: 1-517-754-2701
TRAFFIC CONTROL EQUIPMENT • CONSTRUCTION SUPPLIES • SAFETY PRODUCTS • PAVEMENT MARKINGS

WORK SAFE SUPPLY CO., INC.
P.O. BOX 9086
GRAND RAPIDS, MICHIGAN 49509
1-616-531-6825 . . . 2522 Chicago Dr., Grand Rapids Branch
1-517-754-2701 . . . 2993 Carrollton Rd., Saginaw Branch

June 21, 1988

Representative John Paul Hammerschmidt
2207 Rayburn House Office Building
Washington, D. C. 20515

RE: The Savage Amendment

Dear Mr. Hammerschmidt,

I would like to express my adament opposition to the Savage Amendment. This amendment would greatly reduce the contracting goals for W.B.E's which were justifiably increased recently.

Let's not take a step backward, but rather move forward with equal participation for women-owned businesses.

Sincerely,

Kathy Babcock

Kathy Babcock

SAGINAW BRANCH • 2993 CARROLLTON RD. • PH: 1-517-754-2701
TRAFFIC CONTROL EQUIPMENT • CONSTRUCTION SUPPLIES • SAFETY PRODUCTS • PAVEMENT MARKINGS

BSI

Brock & Sons, Inc.
8731 N. Gilmore Road
Fairfield, Ohio 45014
(513) 874-4555

Linda S. Brock
President

June 21, 1988

PSM Consultants
P.O. Box 21001
Little Rock, Ar. 72212

Dear Joann:

I received your letter pertaining to Congressman Savage's proposed amendment. I wrote letter to both Representative named in your correspondence (a copy is enclosed). I would like to take this opportunity to thank you for informing me about this proposal. I'm certain that I have received several other important letters from you in the past although I am not certain whether or not I took the time to answer.

I would be very interested in a National Association for W.B.E.'s. I would also be very happy to attend the meeting in either July or August and the dues are very resonable.

We need a strong voice in Washington pertaining to W.B.E.'s. If we don't become involved in our own destiny than we have no one to blame but ourselves. We must voice our opinion about the Federal Government's discriminatory policy toward women! I have always stated that all I wanted was an equal chance to compete. Yet, women are not equal (non-minority women that is) to other minorities. I truly believe that the road I have been forced to travel is as hard as any other minorities and therefore, non-minority females deserve the same opportunites afforded to other minorites.

I will get off my soap box for now. I look forward to hearing from you soon. I sincerely appreciate your efforts on behalf of W.B.E.'s across this Country. Also, I will contact the other W.B.E.'s in Ohio that I know are legitimate! The W.B.E.'s that are operating as "fronts" that I am aware of, I will not contact, nor will I deal with them in my business.

Best Reagards,

Linda S. Brock

Linda S. Brock, President

An Equal Opportunity Employer M/F/V/H

JENKINS PAINTING, INC. D.O.T. listed DBE

---------------------STRIPING IS OUR BUSINESS---------------------

---

Rt. 4 Box 456 Chiefland, Fla. 32626 (904) 493-4021

June 16, 1988

Representative Glenn Anderson
2329 Rayburn House Office Building
Washington, D.C. 20515

Dear Sir:

Please be advised that I do not support the Savage Amendment that Congressman Savage is proposing to the House Highway Technical Corrections Bill. I oppose any amendment that would separate the DBE goal or give women only 3.5 percent.

Your vote against the Savage Amendment will be greatly appreciated.

Sincerely yours,

Janet M. Jenkins

Janet M. Jenkins
President
Jenkins Painting, Inc.

POLYPHASE ENTERPRISES, INC.
P.O. Box 16151 / Duluth, Minnesota 55816-0151 / 218-727-1441
Electrical Design and
Engineering
Electrical Contracting

Representative Glenn Anderson
2329 Rayburn House Office Building
Washington, D. C. 20515

Dear Representative Anderson:

I am writing to you in regard to the Savage Amendment to the House Highway Technical Corrections Bill that would reduce women owned companies participation to 3% in the highway construction.

I have been in the electrical construction business for twenty-five years and have always been relegated to the job description of "clerical help" - even though I was responsible for meeting the payroll every Friday, and really took care of all the financial responsibilities of the company and personally indemnified the company, along with my husband.

Today, I own my own company and am meeting our payroll the same as before. We are doing a good job and are being asked to bid on may jobs. We also do electrical design and are competitive with any contractor in the area. I have done this by myself and my competitors still refuse to give credit where credit is due.

If it had not been for the Highway program, women in construction would never have been recognized and there are so many! They are underpaid and deserve much more recognition than they have every received in this industry. I have been aware of this ever since I have been in the business. I believe the women in our office are more dedicated and harder working than most men. They give of their time without counting overtime in minutes or hours.

I am told that Mr. Savage did not explain his amendment the way itreally is and I am opposed to it.

Please do not agree to his amendment. Thank you.

Very truly yours,

POLYPHASE ENTERPRISES, INC.

Frances F. Harkonen
Frances F. Harkonen, President

GENESEE VALLEY NURSERIES, INC.
P.O. BOX 566 BELMONT, NEW YORK 14813
TELEPHONE 716 268-5585

SANDRA G. HUNT, PRESIDENT
KATHRYN J. CHURCH, VICE PRESIDENT
SANDRA G. HUNT, SECRETARY
CONRAD F. CHURCH, TREASURER
LEO D. HUNT, GENERAL MANAGER

June 17, 1988

Representative Glenn Anderson
2329 Rayburn House Office Building
Washington, D. C. 20515

Dear Representative Anderson,

This Womens Business Enterprise is opposed to the Savage amendment to the House Highway Technical Corrections Bill that would separate such firms as ours from the DBE goal of 10% and a woman's goal of 3%, plus or minus.

It is just not equitable for one group of disadvantaged persons to have an advantage over another, which Mr. Savage's amendment would accomplish.

We would support complete elimination of any preference for Women owned businesses and also of Minority owned businesses, if they both cannot be lumped together with one goal, as is now the case.

We hope that you agree with our position on this matter.

Very truly yours,

GENESEE VALLEY NURSERIES INC.

Sandra G. Hunt

Sandra G. Hunt, President

SGH/rs

Pole Line
ELECTRICAL CONST.INC.

NADINE EASTER, President
WBE

Rt. 1, Box 160A, Clinton, Mo. 64735

(816) 885-5253

June 16, 1988

Representative Glenn Anderson
2329 Rayburn House Office Building
Washington, D.C. 20515

Mr. Representative Anderson,

I OPPOSE the amendment to the House Highway Technical Corrections Bill. I prefer to compete as a DBE and have a chance to obtain up to 13% of Federal contracts. The one goal system has been very succesful and should be kept that way. Why discriminate against us WOMEN!!!!! Why cut us out of the free market place.

WOMEN OWNED BUSINESS

POLE-LINE ELECTRICAL CONST. CO.

Nadine Easter

Nadine Easter
President

Three Rivers Construction, Inc.

General Contractors
Women Owned Enterprise
Equal Opportunity Employer

P.O. Box 258
Alpine, Wyoming 83128
307-654-7587

June 15, 1988

Representative Glenn Anderson
2329 Rayburn House Office Building
Washington, D. C. 20515

Dear Representative Glenn Anderson:

I recently had the opportunity to read a letter from Mr. Gus Savage to Ms Jo Anne Payne in regard to the set-asides for minorities and women. On the basis of that letter and a letter I had received from Ms Jo Anne Payne, I would like to urge you to NOT support the Savage Ammendment.

I have not been unhappy with the sharing of the goals with the minority faction. If the goals are to be seperated, however, they most certainly should be equal. Anything less than that would be a further handicap for the women in the industry as well as being grossly unfair!

Unfortunately, we women have been slow to organize a national association for WBE's--unlike the organization that has been organized to advance the rights of minority men.

My personal experience is that the set aside program does NOT actually give me a job, but allows me to be seriously considered IF we are competively low bidder on all levels of bidding. It also encourages the prime contractor to actively encourage minorities--men and women--to become active in the bidding process. If it were to give the minority faction a free ticket to escalated costs borne by the taxpayer, then it would not be working properly.

Thank you for allowing me the opportunity to be heard.

Yours very truly,

Dorothy J. Reinhart

Dorothy J. Reinhart

H. V. Johnston Culvert Co.

3575 - 85th Avenue N.E.
New Brighton, MN 55126
Phone 612/780-1760

June 16, 1988

Representative Glen Anderson
2329 Rayburn House Office Building
Washington, D.C. 20515

MANUFACTURERS OF
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Drainage Products
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Safety Aprons
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Cattle & Horse Passes
Spiral Rib

ACCESSORIES:
Corrugated Steel Fittings
Bottom Plate for Risers
Screens & Caps
Anti-Seep Collars
Special Fabrications

MINNESOTA
Affiliated Member

Dear Representative Anderson,

I am a DBE Manufacturer certified in the states of Minnesota, North Dakota, South Dakota, and Wisconsin.

It has come to my attention that Congressman Gus Savage (from Illinois) has circulated a letter to every minority owned business in the United States (excluding Women-owned Businesses). The nature of his letter is urging a return to the previous two-goal system regarding WBE's and DBE's; a minimum of 10 percent for DBE's and 3.5 percent for WBE's. He has formerly proposed that this issue be included in the technical amendments to the 1987 bill, scheduled to be heard in the month of June.

It is my opinion that Congressman Savage's proposal is outrageous, biased, and definitely destructive to the equal opportunity principle - equal opportunity applies to the feminine gender also!

Here in the Midwest, contractors are much happier with the one goal system. It is a clean, neat, and fair system acceptable to both contractors and government. To tamper with this issue again, separating the goals, would be grossly inflamatory and discriminatory against women's efforts in business.

I therefore do not support the Savage Amendment and respectively urge you to agree with my reasoning.

Yours very truly,

Madrienne Larson

Madrienne J. Larson
President

MJL/jj

"ALWAYS A PRIVILEGE TO SERVE YOU"

INTERSTATE SPECIALTIES, INC.
923 - 10th Avenue North • P. O. Box 6816 Great Falls, Montana 59406 • Ph. (406) 453-8525

June 14,1988

Joann Payne
PSM Consultants
P. O. Box 21001
Little Rock, Ar 72221

Dear Joann:

Thank you for your letter of June 3,1988. I passed your letter on to ten other WBE's in my area and asked that they in turn do the same. I have also written the two Congressmen you addressed.

I believe as you do that its time for women to join together and organize a National Association for WBE's in the Highway Construction Industry. I would be willing to be a member of such an organization.

Sincerely,
INTERSTATE SPECIALTIES, INC.
Beverly Lewis
Beverly J. Lewis
President

INTERSTATE SPECIALTIES, INC.
923 - 10th Avenue North • P. O. Box 6816 Great Falls, Montana 59406 • Ph. (406) 453-8525

June 14,1988

Representative Glenn Anderson
2329 Rayburn House Office Building
Washington, D. C. 20515

RE: Proposed Amendment to Technical Corrections Bill

Dear Congressman Anderson:

Please be advised that I ardently disagree with the amendment proposed by congressman Gus Salvage. If he has his way he will cut women owned businesses out of the free market place. The one goal system has been very successful. Please keep it that way, fair and equitable.

Thank you for your support.

Sincerely,
INTERSTATE SPECIALTIES, INC.

Beverly Lewis

Beverly J. Lewis
President

J. HAROLD MOON, Inc. CERTIFIED WBE

Phone 788-5546
GENERAL CONTRACTOR
P. O. Box 475
RICHTON, MISSISSIPPI 39476

A

June 17, 1988

Representative Glenn Anderson
2329 Rayburn House Office Building
Washington, D.C. 20515

Dear Sir,

We wish to express our concern over Mr. Gus Savage's proposal of changing the WBE and DBE system. As a WBE in the State of Mississippi we strongly oppose any change in the present system of Contracting Percentage. The system as it stands has helped the Women Minorities in Mississippi. Our Company is one of several in the State and ours has a good reputation in the business of Highway building and this has provided a means of more work for us and our employees. Most WBE & DBE's are small business enterprises, therefore my opinion is that they should be treated equally.

Please consider these issues carefully when Mr. Savage's proposal comes up this month.

Sincerely,

Patricia H. Moon

Patricia H. Moon, Pres.

PM/jef
enclosure/Savage letter

Jake McKenzie
SODDING CONTRACTOR

6-13-88

ROUTE 2, BOX 151-D
STURGIS, MISSISSIPPI 39769
(601) 465-7913

Rep. Glenn Anderson
2329 Rayburn House Ofc. Bldg.
Washington, D.C. 20515

Dear Sir:

I am a WBE in the state of Mississippi. I would like to request that you NOT support the SAVAGE Amendment, by Cong. Gus Savage.

We have worked hard to attain our minority goal and if we have proven we can compete, we need a higher percentage, NOT a reduction.

Thank-you.

Loretta McKenzie, President
JAKE McKENZIE, Sodding Contractor

PAL INDUSTRIES, INC.

June 17, 1988

The Honorable Glenn Anderson
2329 Rayburn House Office Building
Washington, D. C. 20515

Dear Representative Anderson:

I am writing you this letter because I am fervently opposed to discrimination in any form. It has just been brought to my attention by Ms. Joann Payne of PSM Consultants that Congressman Gus Savage is proposing an amendment to the House Highway Technical Correction Bill that would separate women from the DBE goal of 10%. It is ironic to me that at a time when our nation is so concerned about equal rights that women continue to be actively discriminated against. Women have fought hard and long for equal percentages with other minorities. I would like at this time to go on record as being violently opposed to Congressman Savage's amendment which does nothing more than promote discrimination. It should be brought to the attention of all that the minority business in this country should not be considered a charity, a handout or a social welfare program. Discrimination is being confused with competition. We all want to eliminate discrimination and work for the achievement of equal opportunity in every phase of American life. To blatantly discriminate against women and not give them the equal opportunity to participate in this minority program is grossly unfair. Any further dialogue that you might be interested in, I will gladly provide.

Sincerely,

Pat Low

Patricia A. Low
President

PAL:gg

57 West New Avenue • Lemont, IL 60439 • 312/257-5700 • 312/257-2070

Jo Ann Hance, Ltd.

D.B.E./W.B.E.

P. O. BOX 293
LEXINGTON, KY. 40584
(606) 266-1300

June 15, 1988

Honorable Glenn Anderson
2329 Rayburn House Office Building
Washington, D. C. 20515

RE: Gus Savage Amendment
Reduction of WBE back to 3.5%

Dear Representative Anderson:

Please take this letter as my vote against Representative Gus Savage's amendment to reduce the contract requirement for Woman Business Enterprises back to 3.5% - as a separate goal. It appears that the WBE's have become successful in competing with the minority group and this is not popular. It is unclear to me if this is a national problem or strictly a localized situation which leads me to wonder if Representative Savage would be so vocal if it were not for the recent Dan Ryan Expressway rumblings in Chicago.

Regardless, women have come too far to be set back. The STURAA of 1987 was a step in the right direction and has not been in effect long enough to be judged for its success or failure. True, it does need enforcement, i.e., firms who are neither capable nor legally qualified to perform services as a disadvantaged firm should be eliminated from the program BUT we who have strived for so long to be considered for even this modest percentage should not be deprived of the opportunity to do so.

At this point, you can be our voice and I am requesting that you speak not only for me but all of those who feel as I do in supressing this amendment from slipping into a new law that would again reduce our percentage back to 3.5%.

Respectfully,

JAH/ss

P.O. Box 1666
1892 Lisbon Road
Lewiston, Maine 04240
(207) 786-0695

June 23, 1988

Joann Payne
PSM Consultants
P.O. Box 21001
Little Rock, AR 72212

Dear Ms. Payne,

We sincerely extend our gratitude to you for making us aware of Congressman Gus Savage's proposed amendment. We are enclosing copies of various correspondence in regards to this matter.

If we can be of any help to you in this matter or any similar matter, we would appreciate being notified. Please stay in touch.

Sincerely,

Nancy Law
Kelly Lord

Nancy Law, President
Kelly Lord, Office Manager

P.O. Box 1666
1892 Lisbon Road
Lewiston, Maine 04240
(207) 786-0695

June 23, 1988

Representative Paul Hammerschmidt
2329 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Hammerschmidt,

I am writing in response to a letter I have had the opportunity to view written by a Congressman Gus Savage regarding a change in the Surface Transportation and Uniform Relocation Assistance Act of 1987. Apparently Mr. Savage wishes to convince his constituents that his proposed amendments would benefit women as well as other minorities. I think his underlying motivation is to reduce the competition for his fellow minority friends. I think you will agree that competition is something that most of us business people must learn to deal with. I think the authors of the 1987 amendment had equality as their goal. I fail to see how giving one disadvantaged group 10% and another equally disadvantaged group 3.2% is equal.

I am urging you to vote against Congressman Gus Savage's Proposal.

Sincerely,

Nancy Law, Pres.

Nancy V. Law

P.O. Box 1666
1892 Lisbon Road
Lewiston, Maine 04240
(207) 786-0695

June 23, 1988

Representative Glenn Anderson
2329 Rayburn House Office Building
Washington D.C. 20515

Dear Mr. Anderson,

I am writing in response to a letter I have had the opportunity to view written by a Congressman Gus Savage regarding a change in the Surface Transportation and Uniform Relocation Assistance Act of 1987. Apparently Mr. Savage wishes to convince his constituents that his proposed amendments would benefit women as well as other minorities. I think his underlying motivation is to reduce the competition for his fellow minority friends. I think you will agree that competition is something that most of us business people must learn to deal with. I think the authors of the 1987 amendment had equality as their goal. I fail to see how giving one disadvantaged group 10% and another equally disadvantaged group 3.2% is equal.

I am urging you to vote against Congressman Gus Savage's Proposal.

Sincerely,

Nancy Law, Pres.

Nancy V. Law

P.O. Box 1666
1892 Lisbon Road
Lewiston, Maine 04240
(207) 786-0695

June 22, 1988

Congressman Gus Savage
1121 Longworth Building
Washington, DC. 20515

Mr. Savage,

This morning I viewed a copy of a letter written by you regarding your proposed amendment to the House Highway Technical Corrections Bill to seperate women from the DBE goal of 10% and require women to go back to the old administrative achievement of 3.2%. I must admit that I am apalled by your allegations. To state that this amendment has "pitted former allies (non minority women and minorities) against each other is absurd. Would you have us believe that we may only perform 10% of the contract amount of any given federal project? The 10% figure is merely a minimum requirement. In the past, I have not made it my business to monitor the work of local DBE's but speaking for my company, we are often awarded more than the 10% minimum. If you run your business in a professional manner and continue to please the firms that you contract with, perhaps you too could be awarded more that the minimum 10%.

The way I understand your proposal, you are trying to convince the reader that women are less of a minority than other disadvantaged groups. I am quite sure you will find that history does not support this statement.

It seems to me that your minority constituents are opposed to being thrown into a pool of strong competition. I am of the belief in the survival of the fittest. If DBE's cannot withstand the competition of WBE's, perhaps they should find another line of work.

Furthermore, I am in reciept of a letter from a Ms. Joann Payne who states that she was present at the meeting that you refer to in your letter. Your letter says "All advocates of Women and Minority rights whom I have heard testify on this issue...have voiced support" for your proposal. Ms. Payne claims to have testified at this hearing and says that she was "adamantly opposed to any amendment that seperated the DBE goal or gave women only 3.5%." Perhaps you were not listening when Ms. Payne gave her presentation.

Your response is anxiously awaited.

Sincerely,

Nancy Law

Nancy V. Law

President

P.O. Box 1666
1892 Lisbon Road
Lewiston, Maine 04240
(207) 786-0695

June 21, 1988

Shiela Stratton, President
NAWIC, Maine State Chapter #276
C/O Everett J. Prescott, Inc.
P.O. Box 600
Gardiner, Maine 04345

Dear Shiela,

After reading the enclosed correspondence, I think you will understand what has prompted us to write. As a member of NAWIC and a women in business, I would be interested in hearing your response to Congressman Gus Savage's proposal. The allegations of "pitting former allies(non minority women and minorities) against each other" in our opinion is completely outrageous! He claims that this ammendment is shrinking the opportunities for WBE's and DBE's. Perhaps Mr. Savage as a disadvantaged man does not enjoy the thought of sharing the wealth with women who as history will show are equally disadvantaged. It seems that he would claim that his ultimate goal is equality. How can he propose to give one minority group 10% and give another minority group 3.2% and possibly call it equal?

On a national level, we would be interested in hearing NAWIC's response to Mr. Savage's proposal. Perhaps this would be an interesting item to include in next months news letter.

Sincerely,

Nancy Law
Kelly Lord

Nancy V. Law
Kelly A. Lord
Law's Nursery/ Agri-Con, Inc.

TELEPHONE
(612) 251-1213

WBE

DONOVAN CONTRACTING OF ST. CLOUD, INC.
P.O. BOX 1168 / ST. CLOUD, MINNESOTA 56302

June 27, 1988

Ms. Joann Payne
PSM Consultants
P.O. Box 21001
Little Rock, AR 72212

Dear Ms. Payne:

Enclosed please find copies of the letters that I sent to Representive Anderson and Representive Hammerschmidt. I also sent a letter to our local Associated General Contractors of Minnesota, since I know our general contractors do not want to have to goals. I letter was also sent to Senator Dave Durenburgers (MN) office.

If there is any more help you need just call.

Thank You for informing me of this problem.

Sincerely Yours,

Colleen M. Donovan
President
Donovan Contracting of St.Cloud, Inc.

CMD:

ENC.(2)

TELEPHONE
(612) 251-1213

WBE

DONOVAN CONTRACTING OF ST. CLOUD, INC.
P.O. BOX 1168 / ST. CLOUD, MINNESOTA 56302

June 27, 1988

Representive Glenn Anderson
2329 Rayburn House Office Building
Washington, D.C. 20515

RE: House Highway Technical Corrections Bill
Congressman Gus Savage - Illinois
Proposed Admendment - DBW/WBE Seperate Goals

Dear Mr. Anderson:

In regards to the above caption, I would like to inform you that our firm is not in support of this amendment and that I hope you don't change the system from the way it is now.

I started Donovan Contracting in 1982, I am a women owned business, in which I own 100 percent. My company performs work on State Highway Projects in Iowa, Minnesota, South Dakota, and North Dakota, we do heavy hauling, gravel sales, turf establishment and waterproofing bridges. Since the goals were made for both DBE/WBE under one goal, Donovan Contracting has increased our business and our workforce.

I feel that by having one goal to reach has made it easier for the General Contractors to meet and it also has made it more competitive for women and minorities to compete in the real world, to make a better business persons out of us.

The bottom line is minorities are fearful that women will take away their 10 percent, since it appears that women owned businesses throughtout the country are becoming more agressive and competitive, and they don't like it.

Being a minority is one thing, but being a women in a mans business is being a minority.

Please keep the goal as one, the system is working for those who want to work. Besides it hasn't been in effect long enough with only one goal to determine if its right or wrong.
Thank You.

Sincerely Yours,

Colleen M. Donovan
President
Donovan Contracting Of St. Cloud, Inc.

CMD:

FLINT HILLS SEEDING, INC.

"We are a Women's Business Enterprise"

Route 1, Box 85
Alta Vista, Kansas 66834
Phone (913) 499-5257
June 24, 1988

Attn: Joann Payne
PSM Consultants
P. O. Box 21001
Little Rock, AR 72212

Dear Ms. Payne:

In regard to your letter dated June 3, 1988, which I received last week, I am enclosing copies of the letter I sent to Rep. Anderson and Hammerschmidt, plus I also wrote to our representative, Jim Slattery, Second Congressional District of KS. I am also enclosing a copy of that letter.

In our area, the DB/WBE program affects the General Contractors as much as it affects the WBE's; plus, they already have an established national organization with clout in Washington. I contacted some of the general contractors that I sub work from to have them alert the Associated General Contractors; I feel it was due to their influence and efforts that the goals were combined for the DB/MBE's in the 1987 Highway Transportation Act.

From personal experience I know that no organization can survive on members that just pay their dues, it need "working members". I am afraid that most married businesswomen may be in the same position I am in; time is the one thing I can not spare. The businesswomen who would have the time to contribute to such an organization might not provide the kind of representation that we need.

We would need women who are actively involved in construction so they would understand the problems. Most of the WBE's in highway construction (in this area) are married with family obligations of one kind or other. Many are also farm wives (as I am), who help out with the farming operation; plus since it is nearly impossible to find good help with the housework at any price, we have that to do also. A number of us also handle the bookkeeping for the company; a small business usually cannot afford to hire an accountant to do the routine bookkeeping.

I do appreciate your concern and I am very gratefull for the information you have sent me in the past in regard to legislation regarding the WBE program.

Sincerely,

Pearl Horne

Pearl Horne
President

FLINT HILLS SEEDING, INC.

"We are a Women's Business Enterprise"

Route 1, Box 85
Alta Vista, Kansas 66834
Phone (913) 499-5257
June 24, 1988

Copy
Same letter sent to Rep. John Hammerschmidt

Honorable Glenn Anderson
2329 Rayburn House Office Building
Washington, D.C. 20515

Re: The Savage Amendment to the Technical Corrections Bill, 1987 Surface Transportation Act

Dear Mr. Anderson:

We oppose passage of the above amendment; it would be very harmful to the WBE contractors in our area of the Midwest.

In Kansas and the adjoining states, the majority of certified DB/WBE contractors are not general contractors; they are small speciality contractors, like our firm, that bid as subcontractors to the general contractors. It would be reverse discrimination if the WBE firms were not allowed to compete with the DB firms for these subcontracts.

There are very few prime contracts on KDOT projects (as well as all other type projects), for the DB/WBE contractors to bid. It is vital that the WBE contractors be allowed to compete on an equal basis with the DB contractors.

I feel confident that if you review all the facts and figures in regard to the 10 percent minimum DB/WBE contracting requirement for state highway projects, you will agree that the present policy of equal DB/WBE participation is more fair to all concerned than the proposed change recommended by the Honorable Gus Savage.

Sincerely,

Pearl Horne
President

MICHIE
CONTRACTING CORP.
POST OFFICE BOX 3445
UNIVERSITY STATION
CHARLOTTESVILLE, VIRGINIA 22903

TELEPHONE 296-2617
AREA CODE 804
SHADWELL, VIRGINIA

GENERAL CONTRACTORS

June 22, 1988

Ms. Joann Payne
PSM CONSULTANTS
P O Box 21001
Little Rock, AR 72212

RE: Congressman Gus Savage's Amendment

Dear Joann:

I would like to thankyou for informing me of Savage's amendment to separate WBE's from the DBE goal of 10%. I am sending my letter to Representative Anderson and my representatives in the state of Virginia. In addition to this I intend to contact the women serving in the House whom Savage states supports his amendment. I am enclosing a copy of my letter for your records.

Sincerely,

Carolyn W. Michie
Carolyn W. Michie
President

1 Encl

MARY L. CRAIG
CERTIFIED PUBLIC ACCOUNTANT
POST OFFICE BOX 277
HELENA, MONTANA 59624

MEMBER OF
AMERICAN INSTITUTE OF
CERTIFIED PUBLIC ACCOUNTANTS

MONTANA SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS

AMERICAN WOMAN'S SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS

AMERICAN SOCIETY OF
WOMEN ACCOUNTANTS

June 22, 1988

Joann Payne
P.O. Box 21001
Little Rock, AR 72212

Dear Joann Payne:

Thank you for informing me about the situation with the Savage Amendment. I am a WBE in the State of Montana and am concerned about the preservation of the WBE program. I have written to the two representatives that you identified to express my concerns and to asking them to not vote for the Savage Amendment.

I wanted to let you know that your efforts in support of the WBE program are much appreciated. Keep up the good work.

Kind regards,

Mary Craig

Mary L. Craig, CPA

Signa Lite, Inc.
1100 N.E. DELTA SCHOOL ROAD
LEE'S SUMMIT, MO 64064
816-795-1020

June 29, 1988

Joann Payne
PSM
P.O. Box 21001
Little Rock Ar 72212

Dear Joann:

I would be willing to be a member of a National Association that would look after the interests of women in Washington. If we do not organize and lobby for our interests we will keep losing our gains. I would be glad to support this effort by annual dues.

Letters opposing the Savage Amendment were sent to Rep. Glen Anderson and Rep J.P. Hammerschmidt.

Keep up the good work. We need you.

Sincerely,

Geneva M. Haas

Geneva M. Haas
President

' 440

MID-ATLANTIC STEEL CONTRACTORS, INC.
3716 Court Place

Ellicott City, Maryland 21043
301-621-5373 (Wash)
301-465-6399 (Balt)

June 1, 1988

Ms. Jo Ann Payne
P S M
1313 N. Hills Boulevard
Suite 302
N. Little Rock, AK 72114

Dear Ms. Payne:

Enclosed is a list of WBE from the Maryland directory. It is my understanding from your secretary that you are preparing a national mailing.

I am interested in helping you in whatever way I can, including fund raising. Please keep in touch and let me know how I can be of assistance. MID-ATLANTIC is located between Baltimore and Washington. Give me a call the next time you're in town.

Very truly yours,

MID ATLANTIC STEEL CONTRACTORS, INC.

Regina D. McManus/kmp

Regina D. McManus
President

RDM/kmp

Enclosure

J & M
Construction
Company

508 WEST MAIN ST. • P. O. BOX 142, HUNTSVILLE, TN 37756 (615) 663-3370

June 14, 1988

Ms. Jo Anne Payne
c/o P.S.M.
1313 N. Hills Blvd.
Little Rock, Arkansas 72114

Dear Ms. Payne:

We are in receipt of your letter dated June 3, 1988 concerning Congressman Gus Savage and his amendment on the set aside goals. I am attaching copies that I sent to various elected officials. I do hope this will be of help and I know that we must unite together and be heard.

If, we may be of further assistance do not hesitate to contact me.

Sincerely Yours,

Norma Jean

Norma Jean Potter
J & M Construction Co.

Enclosures

JIM OLIN
6TH DISTRICT, VIRGINIA

WASHINGTON OFFICE:
1230 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5431

COMMITTEES:
AGRICULTURE
SMALL BUSINESS

Congress of the United States
House of Representatives
Washington, DC 20515

DISTRICT OFFICES:
406 FIRST STREET, ROOM 706
ROANOKE, VA 24011
(703) 982-4672

925 MAIN STREET, 3D FLOOR
LYNCHBURG, VA 24504
(804) 845-8546

13 W. BEVERLEY STREET, 3D FLOOR
STAUNTON, VA 24401
(703) 885-6178

SUITE 600
SOVRAN BANK BLDG
COURT SQUARE
HARRISONBURG, VA 22801
(703) 433-9433

September 21, 1988

Honorable Ike Skelton
Chairman
Subcommittee on Procurement,
 Innovation, & Minority Enterprise
B363 Rayburn HOB
Washington, D.C. 20515-6318

Dear Mr. Chairman:

Enclosed please find a copy of the written testimony of John Vande Velde, chairman of the Statewide Transportation Alliance of Associations. I request that this testimony be included in the record of the August 8 field hearing in Chicago.

As I understand it, Mr. Vande Velde did not request that his testimony be considered until one week before the hearing, and the schedule already had been filled. Nevertheless, Mr. Vande Velde represents a view that is important to many groups, and I believe that it should be included in the record.

Thank you for your attention to this matter.

Sincerely,

Jim Olin

Jim Olin
Member of Congress

JRO/grh

"PERCEIVED BARRIERS TO MINORITY PARTICIPATION IN FEDERALLY FUNDED HIGHWAY CONSTRUCTION PROJECTS"

FIELD HEARING

by

Committee on Small Business
Subcommittee on
Procurement, Innovation and
Minority Enterprise Development

Testimony of
John C. Vande Velde
Chairman

Statewide Transportation Alliance of Associations
Chicago, Illinois

August 8, 1988

My name is John Vande Velde. I am Chairman of the Illinois Statewide Transportation Alliance of Associations, a group of seven major trade Associations representing over 800 prime contractors, subcontractors and suppliers. All but a few of these firms meet the federal classification of small businesses in our highway construction industry, that is, doing less than $14 million a year in volume.

I am also Vice President of Warning Lites of Illinois, a small business subcontracting firm which has been in existence for 30 years.

I would like to direct my remarks first to the DBE program in general to be followed by specific referrals to the participation of women-owned firms and the Dan Ryan Expressway Reconstruction Project.

Our Associations were originally opposed to the mandated goal of allocating 10% of federally funding highway monies to Disadvantaged Business Enterprises (DBE). Our reason: the mandate was issued without public or industry input, without any evidence of the capacity of qualified DBE firms to perform highway construction work and without any consideration of the impact on non-minority specialty contractors. Furthermore, alleged past discriminations by awarding agencies has not been proven in recent court decisions.

We had foreseen the monumental problems of administering this program and the millions of dollars needed to make it work. We have, however, cooperated with government agencies and committed our members to help make the program work. This is witnessed by the fact that Illinois reaches its goal every year and in fact, exceeds it. We urge you to consider our recommendations. Since without these considerations, the programs problems could continue to fester and sink deeper into a quagmire of bureaucratic red tape and the continued loss of taxpayer monies.

We have, from the very beginning of this program, maintained that the Congress and the various government agencies have set unrealistic goals. We believe that goals for specific projects should be based on the known availability of qualified DBE firms with sufficient resources and training to fulfill the mandate.

Attempting to fulfill quotas has created and nurtured shams and fronts which our Association members decry.

If Congress and the government agencies would re-structure the program, more minority contractors could benefit and at the same time give equal opportunity to non-minority specialty contractors who have been significantly hurt by this program. Many old and established non-minority firms have been presented with the choice to set-up a sham front or fraud or get out of the construction business.

It is for these reasons that our industry supported Congress when it passed the 1986 Surface Transportation and Uniform Relocation Assistance Act which defined women as presumptively disadvantaged and included them in the 10% quota. Women-owned businesses were now able to compete on equal terms. If they are separated, they will need to compete among themselves for a significantly lower percentage. They may now bid competitively for a bigger piece of the pie. I might add that raising the percentage goal is not the answer. Any increase will devastate the program. Let's get the present program working first before making changes that will compound the problems.

The recent uproar by some minority contractors about women being awarded a substantial portion of contracts for the reconstruction of the Dan Ryan Expressway ignores the fact that these women-owned firms attended pre-construction conferences, obtained plans, studied the project, prepared and submitted their bids, which were low. They competed legitimately and fairly. As to choosing one minority group over another, the Chief Counsel of the Federal Highway Administration has declared that "... any preference for one presumptively disadvantaged group to the exclusion of another presumptively disadvantaged group is contrary to the law."

Unfortunately, the attending news media coverage indicated that something evil and sinister had happened. What happened was the competitive system of awarding work to the low bidder was maintained. And, these awards seemed to have provided the impetus that there is something wrong about women-owned business being considered disadvantaged, should be removed from the goal and forced back to the two and three percent level. They are to be punished for performing well.

The Federal Highway Administration reports that no appreciable change has occurred since adoption of this provision. In fact, the Federal Highway Administration reports that even in the quarter within which the Dan Ryan project is reported, no appreciable shift in the national statistics among minority business enterprises and women business enterprises has occurred.

Our Associations support changes in the DBE program which would increase such endeavors as job training, supportive services, management and technical assistance, prequalification and bonding.

Concerning the training program, the Illinois Department of Transportation has committed more than $2.7 million a year for supportive services, on-the-job training programs and staffing for the Bureau of Small Business Enterprises. The SBE staff for these programs has grown in the last two and half years from 8 persons to 31. If this area needs to be increased to improve the program, then we support it.

Caution must be the hallmark for any prime contractor, subcontractor or minority business who plans to enter our industry. It is not the lucrative industry that some believe it to be. Our industry is highly competitive and requires heavy financing and equipment. The American Road and Transportation Builders Association reports that highway contractors face a greater risk of bankruptcy than any other contractors.

A 9-month study by ABT, a Massachusetts based research firm, which was commissioned and then suppressed by the U.S. Department of Transportation, reports and I quote: "... over extension of DBE's is the main contributor to their failure rate of eight times greater than that of non-minority contractors. Particularly for small firms and most DBE's, there is substantial evidence that the DBE requirements have contributed to an increased number of DBE failures. This counter-intensive and unintended impact has usually been a consequence of business growth which has been to rigid."

In addition, the cost of the DBE program is primarily carried by prime contractors in the heavy and highway industry struggling for survival where a 2% profit margin is average. The true cost to the public of this social experiment is included in prime contract bids. The Association believes the public has a right to know what the DBE program costs and urges Congress to make these facts known.

Every and any person in our society has the right to form his/her own business and enter the competitive economic system. But our free enterprise system can only exist under certain political and social conditions. It rests upon the cornerstone of the sanctity of private property and contract. It depends for its operation upon the freedom of choice of multitudes of producers and consumers. Those who undertake risky adventures and new enterprises that have great chances of loss must also be assured of the possibilities for gain. If the climate to such gains becomes hostile, the economy may go into stagnation and even retrogression.

If we are to retain political freedom and keep our society free, strong, and progressive, it is of the highest importance that we keep the competitive motive dominant and alive.

Again, I thank you for the opportunity to present my views.

X X X

STATEWIDE TRANSPORTATION ALLIANCE OF ASSOCIATIONS

Members:

Associated General Contractors of Illinois

Illinois Asphalt Pavement Association

Illinois Concrete Council

Illinois Construction Industry Committee

Illinois Road Builders Association

Southern Illinois Contractors Association

Underground Contractors Association

United Subcontractors of Illinois

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